Supreme Court, U.S.
FILED

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Docket No._____

IN THE SUPREME COURT OF THE UNITED STATES

GLENN R. WAITE,

v.

JUDGE PAUL D. EMPSON, et. al.,

On Petition For Writ of Certiorari to the Supreme Court of the State of Nebraska

---

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Respectively Submitted,

Glenn R. Waite,
Petitioner,
1591 S. Dandelion, #7
Pahrump, NV 89048
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12818

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NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
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Lincoln, Nebraska 68509
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March 17, 1999

Glenn R. Waite
1591 So. Dandelion, Apt. 7
Pahrump, NV 89048

IN CASE OF: A-97-0946, Waite v. Empson

Pet Appellant for Further Review & Brf **filed** 02/12/99 **has been reviewed by the court and the following order entered:**

Petition for further review overruled.

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IN THE NEBRASKA COURT OF APPEALS

Glenn R. Waite, Appellant,	)	No. A-97-0946
v.	)	MEMORANDUM OPINION
Paul D. Emspon, et al, Appellees.	)	AND JUDGMENT ON APPEAL

Mues and Inbody, Judges, and Buckley, District Judge, Retired.
Per Curiam

INTRODUCTION

Glenn R. Waite challenges the Scotts Bluff County District Court's denial of his motion to vacate.

PROCEDURAL BACKGROUND

On February 26, 1997, Waite filed a "Second Amended Petition for Declaratory Judgment," naming Judge Paul D. Emspon, Judge Robert O. Hippe, Judge Alfred J. Kortum, Regional West Medical Center, Nancy Adams, Scottsbluff Internal Medicine Group, and W. Scott Carpenter as defendants. Waite seeks a declaration that there has been no final order rendered in district court cases 38270 and 38279, and that Neb. Rev. Stat. 7-101 (Reissue 1997) and 24-318 (Reissue 1995) are unconstitutional as applied to him in those cases. Waite prayed that the court declare 7-101 and 24-318 unconstitutional and that he is entitled to a final order in district court cases 38270 and 38279.

Defendants Regional West Medical Center and Nancy Adams demurred, alleging, inter alia, that the issues had already been litigated. Defendants Empson, Kortum, and Hippe demurred, alleging, inter alia, that the district court had no jurisdiction, there was a defect of parties, and several causes of action were improperly filed.

The district court granted defendants' demurrers and dismissed the case with prejudice on May 2, 1997. In so doing, the court observed that it had reviewed the files from 38270 and 38279, as well as from several other cases that Waite had filed in regard to Harriet I. Waite's death. Waite did not appeal from the May 2, order.

On June 16, 1997, Waite filed a motion to vacate the May 2, order alleging that he had not received the court's order dismissing his motion for declaratory judgment. Waite alleged that he learned about the ruling only upon calling the district court clerk's office to inquire about the status of the case. On September 4, 1997, without any hearing, the district court denied Waite's motion finding that the motion was without merit. Waite appeals from that order.

ASSIGNMENTS OF ERROR

Waite alleges, restated, that the district court erred in denying him a hearing on the motion to vacate and in sustaining the defendants' demurrers and dismissing his second amended petition.

STANDARD OF REVIEW

An appellate court will reverse a decision on a motion to vacate or modify only if the litigant shows that the district court abused its discretion. Thrift Mart v. State Farm Fire & Cas. Co., 251 Neb. 448, 558 N.W.2d 531 (1997).

DISCUSSION

Final orders.

Waite's second and third cause of action sought a declaration that no final order had been rendered in district court cases 38270 and 38279. These cases were previously before us in A-94-765 and A-94-766, respectively, and we now take

judicial notice of those files.

A review of those records reveals that the appeals were dismissed by this court for lack of jurisdiction under Neb. Ct. R. of Prac. 7(A)(2) (rev. 1996). While our summary order, as allowed by rule 7(A)(2), was abbreviated and did not contain the underlying rationale for the dismissals, a review of our records establishes that the dismissals were based in part on a determination that final orders had been entered in each of those cases long before the filing of those appeals and that Waite had not timely appealed from those prior orders. Specifically, in the district court case 38270, the district court granted the defendant's special appearance finding that the named defendant was not a legal entity. The court subsequently entered an order dismissing the case on October 30, 1991. Waite did not appeal the dismissal. On October 15, 1993, Waite filed a motion to vacate the October 30, 1991 order. That motion was overruled on December 9, 1993. On December 17, 1993, Waite filed a motion for new trial in response to the December 9 order. That motion was overruled on March 1, 1994. Waite did not appeal the denial of this motion.

In district court case 38279, the district court granted the defendant's motions for summary judgment on September 5, 1991 and dismissed the case. Waite did not appeal this dismissal. On October 15, 1993, Waite filed, inter alia, a motion to vacate the September 5, 1991, order. The district court denied the motion to vacate on December 9, 1993. Waite then attempted to vacate the December 9, 1993 order denying his motion to vacate the September 5, 1991, order.The district court denied

this motion on March 1, 1994. Waite did not appeal any of these orders.

Under the law-of-the-case doctrine, the holding of the appellate court on questions presented to it in reviewing proceedings of the trial court become the law of the case; those holdings conclusively settle, for purposes of that litigation, all matters ruled upon, either expressly or by necessary implication. Wicker v. Vogel, 246 Neb. 601, 521 N.W.2d 907 (1994). Because our previous dismissals of A-94-765 and A-94-766 involved a determination, iner alia, that the prior orders in district court cases 38270 and 38279 had finally disposed of those cases and that Waite's appeals were therefore untimely, the relief sought in Waite's petition for declaratory judgment with regard to the finality of the orders in those cases was superfluous. Moreover, the district court lacked the power to allow the reopening, revival, or relitigation of these cases. See Moore v. Black, 220 Neb. 122, 386 N.W.2d 488 (1985) (declaring that declaratory judgment is not a substitute for new trial or appeal). Accordingly, we find that the district court properly dismissed Waite's second and third causes of action.

Constitutionality of Statutes.

Waite's first and fourth causes of action seek a declaration that 24-318 and 7-101 were unconstitutional as applied to him in district court cases 38270 and 38279. As discussed above, the dismissals in 38270 and 38279 are final and the district court cannot reopen or relitigate thsoe cases. Thus, a determination that 24-318 and 7-101 are unconstitutional would have no effect on those cases and

would be merely advisory. Declaratory relief cannot be used to obtain a judgment which is merely advisory. Galyen v. Balka, 253 Neb. 270, 570 N.W.2d 519 (1997). The district
court properly dismissed the declaratory judgment on Waite's first and fourth causes of action.

CONCLUSION

This court has previously determined that district court cases were finally and fully disposed of through dismissal orders long ago. The district court in the current matter could not reopen those cases and accordingly it properly granted the defendant's demurrer to Waite's second and third causes of action. Because the dismissals in both cases are final, any declaration that 24-318 and 7-101 are unconstitutional as applied in those cases would be an impermissible advisory declaration. Thus, the first and fourth causes of action were also properly dismissed.

A judicial abuse of discretion exists when reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. Cedars Corp. v. Sun Valley Dev. Co., 253 Neb. 999, 573 N.W.2d 467 (1998). Since the distict court properly sustained the demurrers, albeit perhaps on grounds other that we have discussed above, we can find no abuse of discretion in the overruling of Waite's motion to vacate.

AFFIRMED.

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Petitioner, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, & SCOTTSBLUFF INTERNAL MEDICINE GROUP, Rspondents.	)))))))))	Case No. 44590 Doc. Page ORDER

Petitioner, Dr. Glenn R. Waite, has responded to this court's order of April 30, 1997, sustaining the general demurrers and dismissing the case with prejudice by filing several more motions of various types, including, but not necessarily limited to, his motion to vacate, supplemental motion to vacate, objection to defendants' resistance to motion & supplemental motion to vacate, a request for hearing, a request for a verbatium record of hearing (I presume of the hearing requested), a request that his motion to vacate be considered a motion for new trial, and his brief.

I have reviewed and considered all of petitioner's post-dismissal filings and discern no merit in any of them. There is no need for a hearing.

IT IS THEREFORE ORDERED, that all forms of relief requested in all of petitioners post-dismissal filings are denied. The order of dismissal of April 30, 1997, stands. The Clerk shall file this order, note the order in the trial docket for me and at this, my direction, and transmit copies to all parties or their counsel.

Dated September 2, 1997.
BY THE COURT,

_____
Alan G. Gless

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Petitioner, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, & SCOTTSBLUFF INTERNAL MEDICINE GROUP, Rspondents.	) Case No. 44590) Doc. Page) ORDER SUSTAINING) GENERAL) DEMURRERS AND) ORDER OF) DISMISSAL

Petitioner, Dr. Glenn R. Waite, initiated this action by filing a petition for declaratory judgment. Respondents immediately after service upon them began filing various demurrers and other defensive pleadings. Dr. Waite responded to the filing of demurrers by filing amended petitiions without allowing time for any responses from me setting hearings or ruling on any of the defensive pleadings. After assembling quite a pile of court records, I conclude there are no questions of fact presented, only questions of law, and that no hearing and no oral arguments are necessary in this case. I have reviewed everything I need to review. I now sustain all defendants' general demurrers, find that no amount of amendment could transform any of Dr. Waite's attempted allegations of fact into sufficient allegations of fact to constitute causes of action, and dismiss this case with prejudice, at petitioner's

costs.

In addition to the petition, amended petition, and second amended petition, the exhibits attached to the petition, the various demurrers, and the objections to the demurrers, and Dr. Waite's brief supporting his objection to the demurrers to the second amended petition, I also have now obtained and read a number of other related documents, all of which have been referred to in the various filings in this case. From Waite v. Regional West Medical Center, et. al., Case No. 4:CV95-3447, United States District Court for the District of Nebraska, I have read the reports and recommendations of Magistrate Judge David L. Piester (filings 10 & 22) and the memorandum and order and judgment of the United States Distrit Judge Richard G. Kopf (filings 27 & 28), both dated July 25, 1996, adopting the magistrate's recommendations, denying the appeal from one of the magistrate's orders, and dismissing the case. Because I also have reviewed the U.S. District Court's docket sheet, as it appeared on February 25, 1997, I am aware that Dr. Waite has appealed Judge Kopf's judgment of dismissal to the United States Court of Appeal for the Eighth Circuit.

From the Nebraska Court of Appeals, I have read Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 917 (1995), and Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992), both relating to earlier actions Dr. Waite filed in this Court, which gave rise to the two court of appeals decisions. Assuming Dr. Waite accurately reports to me in his brief that the court of appeals dealt only with this court's Case Nos. 38267, 38268, and 38271 in its

two opinions, cited above, there can be no question but that those cases have become final and cannot be revivied or reviewed by later district court action.

I also have obtained and read several documents from this court's earlier cases filed by Dr. Waite to which Dr. Waite and some of the defendants in this case have referred. Specifically, from this court's Case No. 38269, I have read Judge Empson's direction to the clerk, to notify the county attorney of any future filings by Dr. Waite in any of Case No. 38269's companion cases and Judge Empson's direction to the county attorney in that connection. Both of Judge Emspon's directions are contained within the order overruling the motion to reconsider the order of October 3, 1996, filed October 28, 1996. Dr. Waite referred to this filing in paragraph 10 of his petition in this case.

From this court's Case No. 38270, I have read: Judge Kortum's letters to Dr. Waite, dated August 10, 1994, and November 14, 1995, described by Dr. Waite in paragraph 14 in the petition in this case; Judge Hippe's "memorandum decision" of December 9, 1993; Judge Kortum's order of March 1, 1994, overruling Dr. Waite's motion for new trial; and Judge Kortum's order of March 1, 1994, overruling Dr. Waite's motion to vacate the summary judgment of dismissal, described in paragraph 19 of the petition in this case.

From this court's Case No. 38279, I have read Judge Hippe's summary judgment of dismissal dated September 5, 1991, and Judge Kortum's letters to Dr. Waite dated August 10, 1994, and November 14, 1995. The clerk could not find in case file a letter from Judge Kortum to Dr. Waite,

dated March 2, 1995, but it ultimately does not matter what that letter may have said.

Dr. Waite has not alleged anything that would give rise to a valid cause of action against defndants Emspon, Hippe, and Kortum, in thier personal or individual capacities, nor, so far as the pleadings in this case give any indication, could he do so. All of their actions referred to in Dr. Waite's various allegations were official actions.

With respect to Judge Empson's directives to the Clerk of the District Court and the County Attorney relating to actions to be taken in response to Dr. Waite filing anything in any of the five companion cases in this court, Case Nos. 38267, 38268, 38270, 38271, & 38279, when all the judgments became final in all these cases, Judge Emspon's directive became inoperative. Nothing Dr. Waite may have filed in any of those cases after Judge Empson's directive could have reinvigorated those cases from their final judgments of dismissal. Everything Dr. Waite did file in any of those five cases after the dates upon which the judgments of dismissal became final failed to reinvigorate any of those cases. Those cases expired on the dates the judgments of dismissal became final, with or without appeals and remain expired.

That there may have been various procedural motions not separately ruled upon does not inhibit the effectiveness of the judgments of dismissal. The judgments of dismissal overrode the pending procedural motions.

All of Dr. Waite's efforts in this case, in the form of separately stated and separately numbered causes of action, if

recognized as causes of action at all, would constitute impermissible collateral attacks.

IT IS THEREFORE ORDERED, that all defendants' general demurrrers are sustained. Petitioner shall not be allowed to attempt to amend further. This action is dismissed with prejudice, at petitioner's costs. The Clerk shall file this order, note the order in the trial docket for me and to this, my direction, and transmit copies to all parties or their counsel.

Dated April 30, 1997.

BY THE COURT,

_____

Alan G. Gless

IN THE SUPREME COURT FOR THE STATE OF NEBRASKA

GLENN R. WAITE, Plaintiff-Appellant, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, NANCY ADAMS, SCOTTSBLUFF INTERNAL MEDICINE GROUP, and W. SCOTT CARPENTER, W. SCOTT CARPENTER, Defendants-Appellees.	)))))))))))	No. 97-0946 **APPELLANT'S PETITION FOR FURTHER REVIEW and SUPPORTING MEMORANDUM BRIEF**

PETITION FOR FURTHER REVIEW

Appellant, Glenn R. Waite, pursuant to Neb. Rev. Stat. section 24-1107 (Reissue 1995), petitions the Nebraska Supreme Court for further review of the decision of the Nebraska Court of Appeals on January 21, 1999. The grounds for granting this petition are based on the following errors:

1) The Court of Appeals erroneously concluded that the previous appeals in cases A-94-765 and A-94-766 involved a determination that the prior orders in district court cases 38270 and 38279 were final appealable orders and/or that the law-of-the-case doctrine applies to a later appeal when the previous appeal was dismissed for lack of jurisdiction.

2) The Court of Appeals erroneously concluded that the district court properly sustained the demurrers and therefore erroneously concluded that there was not an abuse of discretion in overruling Waite's motions to vacate.

3) The Court of Appeals violated my federal rights by failing to provide me

with prior notice that it was taking judicial notice of the Order dated October 30, 1991 and erred in failing to sustain my second assignment of error in regard to the district court taking judicial notice of facts.

4) The Court of Appeals erroneously concluded that a declaration as to the constitutionality of N.R.S. 24-318 and 7-101 would have no effect on cases 38270 and 38279 and would merely be advisory.

APPELLANT'S SUPPORTING MEMORANDUM BRIEF

STATEMENT OF FACTS

On October 25, 1996, Judge Empson in case 38269 threatened the U.S. Constitutional rights of Glenn R. Waite, individually, which rights were distinct from those of the personal representative. Glenn R. Waite, individually, filed a timely appeal docketed as case A-96-1118. The Court of Appeals dismissed that appeal for lack of jurisdiction even though that appeal involved the personal rights of Glenn R. Waite. Glenn R. Waite then filed this declaratory judgment action requesting the District Court to determine his individual rights which were distinct from the rights of the personal representative. On May 2, 1997, the district court sustained the defendants' general demurrers and dismissed the action. The Clerk failed to send Waite a copy of the dismissal order. Waite only learned of the ruling upon calling the district court clerk's office. Waite filed a motion to vacate the dismissal order based on the Clerk's failure to timely provide him a copy of the dismissal order. Upon receiving a copy of the dismissal order, Waite filed a supplemental motion to vacate the dismissal order based on the

allegation that the court violated his U.S. constitutional rights by failing to provide him with a notice and the opportunity for a hearing on taking judicial notice of facts contained in other cases and that the court erred in sustaining the demurrers. The Court of Appeals on January 21, 1999 took judicial notice of its own records and stated that the previous appeals in cases 94-765 and 94-766 were dismissed for lack of jurisdiction, but also involved a determination on the merits that the prior orders of the district court had finally disposed of all issues in those cases. However, the court records in case 94-765 and 94-766 provide absolutely no evidence that the Court determined that the prior orders in the district court finally disposed of all issues in the cases. It can be implied from the time sequence of events that the filing of the Clerk's certification triggered the Court's own motion to dismiss the appeals for lack of jurisdiction because the district court had not yet disposed of all issues. The Clerk's certification shows that issues are still undisposed of by the trial court.

The Court of Appeals took judicial notice that the district court sustained a special appearance on June 28, 1991 on the basis that "Regional West Medical Center Nursing Service" was not a legal entity. However, the court record shows that there was more than one defendant. The caption of the original complaint listed "Regional West Medical Center" as one defendant and "Nursing Service" as another defendant. Because there are no commas after any name listed in the caption, this does not prove there is only one defendant. The body of

the complaint shows evidence of more than one defendant. The Court of Appeals took judicial notice of the October 30, 1991 order without prior notice as required by the 14th Amendment. The Court of Appeals now claims that that Order was a final appealable order. The record in case 94-765 shows that the October 30, 1991 order only addressed the issues of the sustaining of a special appearance and whether "Regional West Medical Center Nursing Services" was a legal entity and the order was a result of an ex parte conference between Judge Hippe and attorney James Snowden without any prior notice to plaintiff. There is no order or language contained in the October 30, 1991 order disposing of the Motion to Dismiss filed by "Regional West Medical Center" on July 19, 1991. The second amended petition alleges facts that that motion to strike and to dismiss has never been disposed of in case 38270. The order dated October 30, 1991 is absolutely void under the 14th Amendment since the order was rendered without any prior notice to plaintiff and there was absolutely no motion nunc pro tunc filed in case 38270 and Judge Hippe's wife is a party to case 38270. The Court of Appeals' opinion took judicial notice of the motion to vacate on October 15, 1993, but failed to take judicial notice of the "Motion to Annul the Defendants' Motion to Dismiss" also filed on October 15, 1993 and judicial notice of the Motion to recuse Judge Hippe filed November 2, 1993. The Court of Appeals claims that the memorandum decision order dated December 9, 1993 is a final appealable order. However, that order denies both Waite's motion to vacate the October 30, 1991 order, and Waite's motion to annul

Regional West Medical Center's Motion to Dismiss and failed to dismiss the amended petition. The overruling of Waite's motion to annul left Regional West Medical Center's Motion to strike and to dismiss as a pending motion. The Clerk's certification in case 94-765 shows that the Court has not yet disposed of this motion which raises the issue of the rights of both the personal representative and Waite, individually. The memorandum decision of December 9, 1993 specifically states that Waite, individually, may file a future action against the defendants. The "memorandum decision" of December 9, 1993 is a conditional order because it leaves to speculation as to what the final effect might be in regard to the rights of Waite, individually. Furthermore, the memorandum decision of December 9, 1993 was rendered by Judge Hippe when there was a pending motion to disqualify him as judge in the case. The second amended petition alleges facts that there is no order disposing of the motion to recuse Judge Hippe. At the December 16, 1998 oral argument before the Court of Appeals, attorney Charles E. Lowe stated that Judge Hippe has not participated in the cases after a motion to recuse him was filed. This is absolutely false based on the records contained in case 94-765 in this Court and in case 38269 in the District Court. In case 94-765, the record shows that the Motion to recuse him was filed on November 2, 1993 and then Judge Hippe signed an order on December 9, 1993. In case 38269, the court records show that Judge Hippe entered an order in that case as recent as July 31, 1997 after he had recused himself in that case. It is alleged in the second amended petition

that there is no order disposing of Nancy Adams' notice of irregularly issued summons and special appearance in the alternative dated October 11, 1994 and there is no order disposing of the motion to amend summons dated February 22, 1995.

In case 38279, the Court of Appeals claims that the summary judgment of dismissal on September 5, 1991 is a final appealable order. However, the second amended petition alleges facts that the Court had not disposed of the Motion to Strike filed in June 1991. The motion to strike raises the issue of the administration of morphine to Harriet Waite which involves nursing students whose instructor was Anne Hippe, now the Chairsperson of the Nursing School. The summary judgment of dismissal was not a final appealable order because the court had not disposed of all issues. Next, the Court of Appeals claims that the order dated December 9, 1993 is a final appealable order. The Clerk's certification in case 94-766 and second amended petition in this case alleges facts showing that the district court has (1) not yet disposed of a motion dated March 21, 1994 to vacate the December 9, 1993 order claiming that the defendants filed false testimony at the October 29, 1993 hearing on the issue of whether Waite had prior notice of the August 9, 1993 hearing and prior notice of the motion for summary judgment and the affidavits attached to that motion in case 38279, and (2) and not yet disposed of Dr. Carpenter's response to that motion.

Appellant requests this court to take judical notice of Judge Empson's order dated October 25, 1996 in case A-96-1118 and the fact that the Court of Appeals

dismissed that appeal for lack of jurisdiction. Appellant requests that this Court take judicial notice of all pleadings cited above in this statement of facts and contained in cases A94-765 and A94-766.

ARGUMENT

To the Honorable Nebraska Supreme Court: It is undisputed that in case 38270 there was the sustaining of a special appearance as to "Regional West Medical Center Nursing Services" and the District Court has never disposed of the Regional West Medical Center's Motion to Strike and to Dismiss in case 38270, Waite's motions to recuse Judge Hippe, Nancy Adams' notice of irregularly issued summons and special appearance in the alternative filed October 11, 1994, and Waite's motion to amend summons filed February 22, 1995. It is also undisputed that the district court has never disposed of Dr. Carpenter's motion to strike and Waite's motion to vacate the December 9, 1993 order on the basis that the defendants filed perjured testimony at the October 29, 1993 hearing which determined whether the plaintiff received a notice of the affidavits filed with the motion for summary judgment in case 38279, and Dr. Carpenter's response to that motion. After I alleged facts showing that Judge Hippe has a financial interest in the cases, the defendants have continually denied me Due Process. Under the 14th Amendment to the U.S. Constitution, I am entitled to be heard on the merits of the pending motions and entitled to a final appealable order of the pending issues in the cases. The crux of your decision to grant further review goes to whether or not you are going to grant my rights under the U.S.

Constitution.

THE LAW-OF-THE-CASE DOCTRINE APPLIES TO ONLY ONE CASE, AND DOES NOT APPLY TO WHAT IS DONE IN ANOTHER CASE AND DOES NOT APPLY WHEN THE COURT LACKED JURISDICTION ON PRIOR APPEAL.

It is undisputed that a previous appeal in cases 94-765 and 94-766 was dismissed for lack of jurisdiction. The Court of Appeals is now claiming that it had jurisdiction in cases 94-765 and 94-766 and it made a determination that the prior orders in the district court in cases 38270 and 38279 were final appealable orders and the law-of-the-case doctrine bars this appeal. Under Nebraska law, the law-of-the-case doctrine **only** operates to preclude a reconsideration of substantially similar, if not identical, issues at successive stages of **the same suit**; Carpenter v. Cullan, 254 Neb. 925, 581 N.W.2d 72 (1998). "Law of the case" applies only to the one case, and does not, like "res judicata," forclose parties or privies in one case by what has been done in another case; United States v. Davis, 3 F. Supp. 97 (1933). Where the appellate court did not have jurisdiction on first appeal, its determination is not binding on a subsequent appeal as law of the case; Steinman v. Clinchfield Coal Corp., 121 Va. 611, 93 S.E. 684 (1917). "Res Judicata" differs from "law of the case," in that it forecloses parties or privies in one case by what has already been concluded in previous case, while law of the case applies to final decision affecting same parties to same case; Verzuh v. Rouse, 660 P.2d 1301 (Colo.App. 1982).

It is obvious that the Court of Appeals erroneously concluded that the law-of-the-case doctrine applies to this present appeal which is a different suit claiming a different right and alleging a different set of facts. Cases 38270 and 38279 are common law negligence actions alleging negligence by defendants to plaintiff's decedent whereas this present suit is a declaratory judgment action requesting the court to declare Plaintiff's individual rights as they presently exist.

A FINAL APPEALABLE ORDER IS ONE WHICH DISPOSES OF THE ENTIRE CONTROVERSY BETWEEN THE PARTIES AND LEAVES NOTHING FOR FURTHER CONSIDERATION BY THE COURT.

As early as Smith v. Sahler, 1 Neb. 310 (1871), this court has held that an order to be final and subject to review in an appellate court upon appeal must dispose of the whole merits of the case and leave nothing for the further determination of the court. An order or decree which leaves the law or equity of the case, or some material question connected with the merits of the controversy, for future determination, is interlocutory, and is not subject to review in any appellate court on appeal. This well established rule of law has not changed since 1871. In Wicker v. Waldermath, 238 Neb. 515, 471 N.W.2d 731 (1991), the defendant appealed from a jury verdict for plaintiff tried on the issue of ejectment leaving the issue of rents and profits for later resolution. This Court determined that there had not been a final appealable order even though there was a jury verdict for plaintiff on the issue of ejectment.

In case A-94-765, the court sustained a special appearance on June 28, 1991 on the basis that "Regional West Medical Center Nursing Services" was not a legal entity. Such order is not a final appealable order; Busboom v. Gregory, 179 Neb. 254, 137 N.W.2d 825 (1965). In Busboom v. Gregory, supra, the plaintiffs brought an action against defendants. Both defendants were served by serving an agent. Both defendants filed special appearances which were sustained. A motion for new trial was filed and overruled. The plaintiffs appealed. The questions were whether there was a final appealable order and what the proper procedure for the plaintiffs to follow when the court sustains a special appearance. The Supreme Court held that there had not been a final appealable order and that the procedure to be followed is determined by the plaintiffs and not the defendants. The Court stated:

> "It is for them to determine whether or not a new or amended service of summons can be had. If plaintiffs elect to stand on the service obtained they should so indicate and thereby bring about the dismissal of the action against the persons as to whom the special appearances were sustained."

On July 19, 1991, Regional West Medical Center filed a motion to strike and to dismiss claiming that case 38270 had been filed by plaintiff in his representative capacity and not in his individual capacity. At this point in time Regional West Medical Center entered a general appearance; Eliason v. Devaney, 228 Neb. 331, 422 N.W.2d 356 (1988). In Eliason v. Devaney, supra, it was an action upon two promissory notes signed by the

defendants, Devaney and Holman. A summons was issued and process was accomplished by certified mail on May 10, 1984. On January 2, 1985, the defendant, Devaney, filed a special appearance. The Special Appearance was sustained on Sept. 23, 1985. Then on October 15, 1985, defendant Devaney filed a motion to dismiss and motion to quash. This Court held that as a consequence of the defendant filing a motion to dismiss, he entered a general appearance and the issue of the special appearance was moot. Based on Eliason, supra, the claim by defendants that there was no legal defendant in case 38270 became moot on July 19, 1991 when the motion to strike and to dismiss was filed. Then on October 28, 1991, Judge Hippe who had a financial interest in the case had an ex parte conference with attorney James Snowden without prior notice to Glenn R. Waite. They reached an understanding to obstruct justice and violate Waite's Due Process rights to a hearing and final order on the issues going to the pending motion to strike and to dismiss by entering an order of dismissal nunc pro tunc on the basis that the court had sustained a special appearance on June 28, 1991 and on the basis that "Regional West Medical Center Nursing Services" was not a legal entity. Under Nebraska law, a defendant cannot both obtain an order sustaining a special appearance and also obtain a dismissal in their favor on the merits. In Bankers' Life Ins. Co. v. Robbins, 59 Neb. 170, 80 N.W. 484 (1899), the Court stated:

> "A party cannot be permitted to occupy so ambiguous a position. He cannot deny the authority of the court to take cognizance of an action or proceeding and at the same time seek a judgment

in his favor..."

On October 30, 1991, without any prior notice whatsoever to Glenn R. Waite, Judge Hippe who had a financial interest in the case signed the order nunc pro tunc. That order contained no language whatsoever addressing the issues going to Regional West Medical Center's motion to strike and to dismiss filed July 19, 1991. The October 30, 1991 order is absolutely void under the 14th Amendment to the U.S. Constitution because there was absolutely no prior notice and absolutely no opportunity for a hearing on the merits of an action to enter an order of dismissal nunc pro tunc on the issue of whether the case should be dismissed because "Regional West Medical Center Nursing Service" was not a legal entity. A judgment is void unless reasonable method of notification is employed and reasonable opportunity to be heard is afforded to the persons affected; Board of Trustees of York College v. Cheney, 160 Neb. 631, 71 N.W.2d 195 (1955). A void judgment is, in legal effect, nothing. All acts performed under it, and all claims flowing out of it, are void; Hayes County v. Wileman, 82 Neb. 669, 118 N.W. 478 (1908). The October 30, 1991 Order is not a final appealable order because the Court had not disposed of the Motion to strike and to dismiss which addressed both Waite's individual rights and his personal representative rights. On October 15, 1993, Waite filed two motions. One was a motion to vacate the October 30, 1991 order. The other was a motion to annul Regional West Medical Center's Motion to Dismiss on the basis that a pretrial motion to dismiss is not a recognized pleading in Nebraska law; Smick vs.

Langvardt, et. al., 216 Neb. 778 (1984). On November 2, 1993, Waite filed a motion to recuse Judge Hippe on the basis that he had had an ex parte communication with attorney Snowden on October 28, 1991. There is no order disposing of that motion prior to December 9, 1993. On December 9, 1993, Judge Hippe entered a "memorandum decision" when there was a pending motion to recuse him as Judge in the case and when the facts of his disqualification appeared in the court records. Judge Hippe had no authority to decide the facts going to his own disqualification because that would violate N.R.S. section 27-605 and Waite's right to Due Process and right to an impartial decision maker under the U.S. Constitution. An ex parte communication is improper judicial conduct. Nebraska law provides that when a litigant requests recusal on the basis of an ex parte communication, the judge must recuse himself irrespective of whether litigant shows prejudice; State v. Barker, 227 Neb. 842, 420 N.W.2d 695 (1988) and State v. Jenson, 440 N.W.2d 686 (1989). This Court held that when the facts of a Judge's disqualification appears on the record, any orders made by that Judge are void and those orders may be collaterally attacked; Harrington v. Hayes County, 81 Neb. 231, 115 N.W.2d 773 (1908). Furthermore, the December 9, 1993 decision is ambiguous. It states that the court entered summary judgments of dismissal in all cases except case 38270 and then questions whether the sustaining of a special appearance such as this case is a final order and questions whether any judge could make valid judgments and orders after June 28, 1991. It then states that Waite in his individual capacity may file a future

lawsuit against the defendants raising the same issues. Judge Hippe then enters an order denying all motions requesting further relief including Waite's motion to annul Regional West Medical Center's Motion to dismiss. This overruling the motion to annul left as pending the Motion to Strike and to Dismiss. The "memorandum decision" on December 9, 1993 is ambiguous because it leaves open to speculation (1) whether the sustaining of a special appearance is a final order, (2) whether the plaintiff is the plaintiff who lost the case, (3) whether the plaintiff, individually, might in the future sucessfully pursue a claim against the defendants on the same issues, and (4) whether or not the action is still pending since there is no order dismissing Waite's amended petition or order of judgment in favor of either plaintiff or defendant and no order disposing of Regional West Medical Center's motion to dismiss. Under Nebraska law, "judgment" is the court's final consideration and determination of respective rights and obligations of parties as those rights and obligations presently exist; Federal Land Bank of Omaha v. Johnson, 226 Neb. 877, 415 N.W.2d 478 (1987). A conditional judgment is wholly void because it does not "perform in praesenti" and leaves to speculation and conjecture what its final effect may be; Schaad v. Simms, 240 Neb. 758, 484 N.W.2d 474 (1992). The "memorandum decision" of December 9, 1993 questions whether a special appearance is a final order and states that plaintiff might amend the summons or file an affidavit in support of service by publication and that the plaintiff, individually, in the future could pursue a properly filed and

litigated case against the defendants on the same issues determined on December 9, 1993. In Schaad v. Simms, 240 Neb. 758, 484 N.W.2d 474 (1992), the Court stated:

> "A conditional judgment is wholly void because it does not "perform in praesenti" and leaves to speculation and conjecture what its final effect may be."

The December 9, 1993 "memorandum decision" is not a final appealable order because (1) it is void based on Harrington v. Hayes County, 81 Neb. 231, 115 N.W.2d 773 (1908) because the motion to recuse Judge Hippe had not been disposed of before December 9, 1993, (2) it is void based on Schaad v. Simms, 240 Neb. 758, 484 N.W.2d 474 (1992) because it is a conditional order, and (3) it did not dismiss Waite's amended petition or render a judgment in favor of plaintiff or defendants and no order disposing of Regional West Medical Center's motion to dismiss. On March 1, 1994, the Court denied a motion for new trial. This is not a final appealable order. The motion for new trial and the order denying the motion are nullities. Under Nebraska law, the overruling of a motion for new trial is not a final appealable order when there has been no previous "trial" or final judgment which affects the substantial rights of the parties or when the court leaves some issue as revealed by the pleadings of the parties open to further consideration. In Jarrett v. Eichler, 244 Neb. 310, 506 N.W.2d 682 (1993), this Court stated:

> "Filing of motion for new trial and subsequent overruling do not convert otherwise unappealable order into appealable order."..... "Unless

> proceedings leading up to motion for new trial constitute a trial does not afford right to appeal."

When the court overrules a motion for new trial, it lets stand the previous order or judgment from which the motion for new trial was prosecuted from. So one must look at the proceedings leading up to the motion for new trial and determine whether it was a trial and was a "final appealable order" and whether the court has disposed of the entire merits or controversy on the law and facts between the parties. In Wicker v. Waldermath, 238 Neb. 515, 471 N.W.2d 731 (1991), the defendant appealed from a jury verdict for plaintiff tried on the issue of ejectment leaving the issue of rents and profits for later resolution. The defendant filed a motion for new trial on the issue of ejectment which was later overruled. The defendant then prosecuted an appeal. The Supreme Court dismissed the appeal holding that there had not been a final appealable order since the trial court had not disposed of the issue of rents and profits. It held that the motion for new trial and the subsequent order denying the motion were nullities. Based on Jarrett v. Eichler, and Wicker v. Waldermath, supra, the Order denying the motion for new trial on March 1, 1994 is a nullity and is not a "final appealable order".

In case A-94-766, Dr. Carpenter filed a Motion to Strike, or in the alternative to make more definite and certain in June 1991 which raised the issue of the administration of morphine to Harriet Waite. Then on September 5, 1991, the Court entered a summary judgment of dismissal on the basis that the pleadings filed by the personal representative were

nullities. Since the Court had not disposed of Dr. Carpenter's Motion to Strike, or in the alternative to make more definite and certain, the September 5, 1991 order was not a "final appealable order". On October 15, 1993, Waite filed a motion to vacate the September 5, 1991 order. That motion was overruled on December 9, 1993. Under some of the same reasons set forth previously, the December 9, 1993 "memorandum decision" is ambiguous and is void because it does not "perform in praesenti". It leaves to future speculation (1) whether the plaintiff is the plaintiff who lost the case, and (2) whether the plaintiff, individually, might in the future sucessfully pursue a claim against the defendants on the same issues. Pursuant to Schaad v. Simms, 240 Neb. 758, 484 N.W.2d 474 (1992), the December 9, 1993 memorandum decision is void. On March 1, 1994, the Court overruled a motion for new trial. For the same reason set forth above in case 38270, the order denying the motion for new trial is a nullity based on Jarrett v. Eichler, and Wicker v. Waldermath, supra. On March 21, 1994, Waite filed a motion to vacate the December 9, 1993 order based on the fact that Dr. Carpenter's attorney filed perjured testimony at the October 29, 1993 hearing going to the material fact issue of whether Waite received prior notice of the affidavits filed at the September 3, 1991 hearing. This goes to the fact and law of whether the motion for summary judgment is absolutely void because there was no prior notice of the affidavits attached to the motion.

JUDICIAL NOTICE OF FACTS REFLECTED IN THE COURT'S RECORDS IN ANOTHER CASE IS SUBJECT TO THE LIMITATIONS OF THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL.

In order to resolve the issue of whether the district court has disposed of all issues in cases 38270 and 38279, the Court of Appeals took judicial notice of the files in cases A-94-765 and A-94-766. It took judicial notice of the Order dated October 30, 1991 without prior notice. As set forth above, the doctrine of res judicata would apply rather than the law of the case doctrine. Only after a state court has given prior notice and an opportunity to rebut the judicially noticed facts, may that court take judicial notice of facts whether in court records or from another source; Gardner v. Louisiana, 368 US 157, 7 L.Ed2d 207, 92 S.Ct. 248 (1961). However, the facts noticed are subject to the limitations of the doctrine of res judicata and collateral estoppel; State v. Dandridge, 255 Neb. 364, 585 N.W.2d 433 (1998).

As alleged in the second amended petition and facts contained in the record in cases 94-765 and 94-766, it is undisputed that in case 38270 there was the sustaining of a special appearance as to "Regional West Medical Center Nursing Service" and the District Court has never disposed of (1) Regional West Medical Center's Motion to Strike and to Dismiss in case 38270, (2) Waite's motion to recuse Judge Hippe, (3) Nancy Adams' notice of irregularly issued summons and special appearance in the alternative filed October 11, 1994, and (4) Waite's motion to amend summons filed February 22, 1995. It is also undisputed that the district court, in case 38279, has not yet

disposed of (1) Dr. Carpenter's motion to strike, (2) Waite's motion to vacate the December 9, 1993 order on the basis that Dr. Carpenter filed perjured testimony at the October 29, 1993 hearing which determined whether the plaintiff received a notice of the affidavits filed with the motion for summary judgment, and (4) Dr. Carpenter's response to that motion.

It is the rule of law in Nebraska that a general demurrer may be sustained on the basis of res judicata only where such defense affirmatively appears on the face of the petition; Tedco Development v. Overland Hills Inc., 205 Neb. 194, 287 N.W.2d 49 (1980). The doctrine of res judicata or claim preclusion applies only if 4 conditions are met: (1) former judgment was rendered by a court of competent jurisdiction, (2) former judgment was a final judgment, (3) former judgment was on the merits, and (4) same parties or their privies were involved in both actions; Swift v. Dairyland Ins. Co., 250 Neb. 31, 547 N.W.2d 147 (1996). There are also 4 conditions that must exist for collateral estoppel or issue preclusion to apply: (1) identical issue was decided in prior action, (2) there was a judgment on the merits of the action, (3) party against whom rule is applied was party or in privy with party to prior action, and (4) there was an opportunity to fully and fairly litigate issue in prior action; How v. Mars, 245 Neb. 420, 513 N.W.2d 511 (1994). For purposes of res judicata, "judgment on the merits" involves legal rights as distinguished from mere matters of practice, procedure, jurisdiction, or form. Doctrine of res judicata is inpplicable if there was no final judgment on the merits in the previous proceeding

used as basis for application of the doctrine; Kerdt v. Ronan, 236 Neb. 26, 458 N.W.2d 466 (1990).

The opinion of the Court of Appeals on January 21, 1999 states that it took judicial notice of an Order dated October 30, 1991. Such order only sustains a special appearance and only determines that "Regional West Medical Center Nursing Service" is not a legal entity. The order did not dispose of Regional West Medical Center's Motion to Strike and to Dismiss. This order is not a "judgment on the merits", but is merely a determination of practice, procedure, jurisdiction, or form. Furthermore, the facts in the court records shows that Waite did not have a fair and full opportunity to litigate issue in prior action since the facts show that Judge Hippe and attorney Snowden had an ex parte conference and entered the order without any prior notice to Plaintiff Waite. No motion nunc pro tunc was ever filed. Judicial notice was also taken of the December 9, 1993 "memorandum decision". This also is merely a determination of practice, procedure, jurisdiction, or form. Again Waite did not have a fair and full opportunity to litigate issues on his motion to vacate the October 30, 1991 order because the record shows that a motion to recuse Judge Hippe was filed about a month prior the December 9, 1993 and the motion to recuse him was not disposed of prior to the time Judge Hippe signed the December 9, 1993 order. Under Nebraska law when the facts of a Judge's disqualification appears on the record, any orders made by that Judge are void and those orders may be collaterally attacked; Harrington v. Hayes County, 81 Neb. 231, 115 N.W.2d

773 (1908).

The opinion of the Court of Appeals on January 21, 1999 states that it took judicial notice of the summary judgment of dismissal in case 38279 dated September 5, 1991. However, the second amended petition alleges facts that the Court in case 38279 rendered the September 5, 1991 order without disposing of Dr. Carpenter's Motion to Strike filed in June 1991. If these facts are true, then the September 5, 1991 order is not a final judgment. Also, the second amended petition alleges facts that the only issue determined by the September 5, 1991 order is whether the pleadings filed by the plaintiff were a nullity. Such issue is merely a determination of practice, procedure, jurisdiction or form. There was no judgment on the merits of the negligence action. The Court of Appeals also took judicial notice of Waite's motion to vacate the September 5, 1991 order. The motion was overruled. However, Dr. Carpenter obtained a favorable ruling on the motion to vacate the September 5, order by filing false testimony regarding whether or not I had prior notice of the affidavits and motion for summary judgment. The second amended petition alleges that there is a pending motion raising this issue which has not been disposed of by the District Court. Again, it cannot be said that Waite had a fair and full opportunity to litigate the issues on his motion to vacate in case 38279. Another reason why Waite did not have a fair and full opportunity to litigate the issues was that the September 5, 1991 order was determined by Judge Hippe whose wife has a financial interest in the case.

The Court of Appeals has failed to show clear evidence that all 4 conditions of Res Judicata and all 4 conditions of collateral estoppel exist in order to render a judgment in favor of the defendants-appellees.

A GENERAL DEMURRER ADMITS ALL ALLEGATIONS OF FACT WHICH ARE ISSUABLE, RELEVANT, MATERIAL, AND WELL PLEADED. THE PETITION IS TO BE LIBERALLY CONSTRUED AND, IF SO CONSTRUED, THE PETITION ENTITLES PLAINTIFF TO ANY RELIEF, THE DEMURRER MUST BE OVERRULED.

A general demurrer tests the substantive legal rights of parties upon admitted facts including proper and reasonable inferences of law and fact which may be drawn from facts which are well pleaded; Johnson v. Ruhl, 162 Neb. 330, 75 N.W.2d 717 (1956). A general demurrer admits all allegations of fact which are issuable, relevant, material, and well pleaded, but does not admit pleader's conclusions of law or fact; Christopherson v. Christopherson, 177 Neb. 414, 129 N.W.2d 113 (1964). A petition will be found sufficient if, from statement of facts set forth therein, the law entitles plaintiff to recover any relief; Matheson v. Stork, 239 Neb. 547, 477 N.W.2d 156 (1991). Statement of "facts sufficient to constitute a cause of action," as used in statute governing demurrer, means narrative of events, acts, and things done or omitted which show legal liability of defendant to plaintiff; Neb. Rev. Stat. section 25-806(6); Carlson v. Metz, 248 Neb. 139, 532 N.W.2d 631 (1995). When a petition contains more than one count, and general demurrer is directed to the entire pleading, and is

not limited to a particular cause of action, if either count is sufficient, the demurrer must be overruled; Alexander v. Thacker, 30 Neb. 614, 46 N.W. 825 (1890).

As alleged in the second amended petition, the facts are undisputed that Regional West Medical Center filed a motion to strike and to dismiss in case 38270, plaintiff filed a motion to recuse Judge Hippe, Nancy Adams filed a notice of irregularly issued summons and special appearance in the alternative on October 11, 1994, and Dr. Carpenter filed a motion to strike in June 1991 and the plaintiff filed a motion to vacate the December 9, 1993 order on the basis that the defendants filed perjured testimony at the October 29, 1993 hearing which determined whether the plaintiff received a notice of the affidavits filed with the motion for summary judgment in case 38279 and defendant Carpeter filed a response to that motion on 3-15-94. The facts are undisputed that the district court has never disposed of these pleadings. Under the U.S. Constitution, I am entitled to be heard on the merits of these pending motions and entitled to a legal determination of these issues in the district court. It is obvious that the second amended petition states a claim under the U.S. Constitution and entitles me to relief.

The opinion dated January 21, 1999 states:

> "Since the district court properly sustained the demurrers, albeit perhaps on grounds other than we have discussed above, we can find no abuse of discretion in the overruling of Waite's motion to vacate".

It is undisputed that in case 38279 (not 38270) the September 5, 1991 summary judgment was rendered against the personal representative and there was no judgment rendered against Glenn R. Waite, individually. The Order sustaining the general demurrers and order of dismissal filed May 2, 1997 states:

> "All of Dr. Waite's efforts in this case, in the form of separately stated and separately numbered causes of action, if recognized at all, would constitute impermissible collateral attacks".

The second amended petition clearly states:

> "Plaintiff seeks a declaration only of his individual rights which are distinct from his rights as personal representative of the decedent's estate in his representative capacity as they relate to cases 38270 and 38279...."

Under Nebraska law, a person acting in a representative capacity who litigates to judgment questions relating to his or her rights, duties, or liabilities in that capacity is not bound by that judgment in a subsequent proceeding with respect to his or her personal or individual rights connected with the same subject matter; American Province of the Servants of Mary Real Estate Corp. v. Metropolitan Utils. Dist., 178 Neb. 348, 133 N.W.2d 466 (1965); Hickman v. Southwest Dairy Suppliers, Inc., 194 Neb. 17, 230 N.W.2d 99 (1975); and Jaramillo v. Burkhart, 999 F.2d 1241 (8th Cir.1993). Under federal law, the enforcement of a judgment against the person or property of one not designated as a party nor made a party by service of process violates the due

process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution; Hansberry v. Lee, 311 US 32, 85 L.Ed 22 (1940); and Richards v. Jefferson County, Ala., 517 US___, 135 L.Ed2d 76, 116 S.Ct. 1761 (1996). Under Nebraska law and federal law, a person who was not a party or privity to a prior judgment may challenge that judgment without engaging in an impermissible collateral attack; Concerned Citizens v. Dept. of Environ. Contr., 244 Neb. 152, 505 N.W.2d 654 (1993); Krohn v. Gardner, 238 Neb. 460, 471 N.W.2d 391 (1991); Martin v. Wilks, 490 US 755, 104 L.Ed2d 835, 109 S.Ct. 2180 (1989).

The opinion of the Court of Appeals that the district court properly sustained the demurrers and that they could find no abuse of discretion is clearly erroneous.

ANY DECLARATION THAT SECTIONS 24-318 AND 7-101 ARE UNCONSTITUTIONAL IN CASES 38270 AND 38279 WOULD NOT BE AN IMPERMISSIBLE ADVISORY DECLARATION BECAUSE THE MEMORANDUM DECISION OF DECEMBER 9, 1993 HELD THAT WAITE, INDIVIDUALLY, MAY IN THE FUTURE FILE A PROPERLY FILED AND LITIGATED CASE AGAINST THE NAMED DEFENDANTS IN CASES 38270 AND 38279.

The Court of Appeals in its opinion dated January 21, 1999 stated that the dismissals in both cases are final. However, as set forth previously on the law and facts, there is no final appealable order contained in cases 38270 and 38279. Furthermore, the memorandum decisions in both cases held that Waite, individually, may in the future file a case against the named defendants. Certainly, cases 38270 and 38279 are not final in regard to the rights of Waite,

individually, and the memorandum decision left open to speculation as to what the final result would be in regard to the rights of Waite, individually.

WHEREFORE, Appellant most respectively prays that this Court will grant his petition for further review.

Glenn R. Waite,
Appellant,
1591 S. Dandelion #7
Pahrump, NV 89048
(702)-751-8592

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

September 30, 1994

Glenn R. Waite
1202 West 28th Street
Cheyenne, WY 82001

IN CASE OF: A-97-0765, Waite v. Regional West Medical Center

Misc. Submissions to Court - Jurisdiction **filed** 09/22/94 **has been reviewed by the court and the following order entered:**

Appeal dismissed. See Rule 7A(2).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
402-471-3731

September 30, 1994

Glenn R. Waite
1202 West 28th Street
Cheyenne, WY 82001

IN CASE OF: A-97-0766, Waite v. Carpenter

Misc. Submissions to Court - Jurisdiction **filed** 09/22/94 **has been reviewed by the court and the following order entered:**

Appeal dismissed. See Rule 7A(2).

Respectively,

CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	SUPPLEMENTAL TRANSCRIPT Case No. 38270 Supreme Court Case No.A-94-0765

Supplemental
case # 38270

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CERTIFICATION.....-1

DEBORAH MAY GARDNER
CLERK OF THE DISTRICT COURT
Scotts Bluff County Gering, NE 69341
P.O. Box 47 (308) 436-6641
September 20, 1994

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	Case No. 38270 CERTIFICATION

The record herein does not contain any ORDER FOR HEARING in regard to the Motion to Strike and Dismiss filed by Defendants on July 19, 1991; nor does it

contain any JOURNAL ENTRY indicating that the court heard this Motion.

The record herein does not contain any MOTION filed by the defendants requesting any Order Nunc Pro Tunc; nor does the record contain any JOURNAL ENTRY indicating that the court heard such a motion.

Deborah May Gardner
SEAL Clerk of the District Court

STATE OF NEBRASKA)
) ss. IN THE DISTRICT
COUNTY OF SCOTTS BLUFF) COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

I, Deborah May Gardner, Clerk of the District Court, within and for the County aforesaid, do certify that the foregoing is full, true and correct copy of the pleading in our Case #38270 entitled: Glenn R. Waite, Personal Representative of Harriet i. Waite, Deceased, Plaintiff, vs. Regional West Medical Center, Nursing Service, Defendants.

as the same appears on file in the within entitled case and now in my charge remaining s clerk aforesaid; IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my Official Seal this 20th day of September 1994

Signed
Deborah May Gardner
Clerk District Court

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. W. SCOTT CARPENTER and SCOTTSBLUFF INTERNAL MEDICINE GROUP, Defendants.	SUPPLEMENTAL TRANSCRIPT Case No. 38279 Supreme Court Case No.A-94-0766

Supplemental case # 38279

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CERTIFICATION.....-1

DEBORAH MAY GARDNER
CLERK OF THE DISTRICT COURT
Scotts Bluff County Gering, NE 69341
P.O. Box 47 (308) 436-6641
September 20, 1994

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. W. SCOTT CARPENTER, and SCOTTSBLUFF INTERNAL MEDICINE GROUP, Defendants.	Case No. 38270 CERTIFICATION

The record herein does not contain any Specific ORDER FOR HEARING in regard to Defendants' Motion to Strike or, in the Alternative, to Make more Definite and Certain, Dated June 14, 1991; nor for the Defendants' Motion for Summary Judgment.

There is a Journal Entry Dated August 9th, 1991 that sets a hearing date for all motions of September 3, 1991 at 10:00 a.m.

The record herein does not contain any JOURNAL ENTRY showing that the court heard the Defendants' Motion to Strike or, in the Alternative, to make more Definite and Certain, Dated June 14, 1991 nor for Plaintiff's Motion to Vacate Judgment, Dated March 21, 1994.

Deborah May Gardner
SEAL Clerk of the District Court

STATE OF NEBRASKA)
)ss. IN THE DISTRICT
COUNTY OF SCOTTS BLUFF) COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

I, Deborah May Gardner, Clerk of the District Court, within and for the County aforesaid, do certify that the foregoing is full, true and correct copy of the pleading in our Case #38279 entitled: Glenn R. Waite, Personal Representative of Harriet i. Waite, Deceased, Plaintiff, vs. W. Scott Carpenter and Scottsbluff Internal Medicine Group, Defendants.

as the same appears on file in the within entitled case and now in my charge remaining s clerk aforesaid; IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my Official Seal this 20th day of September 1994

Signed
Deborah May Gardner
Clerk District Court

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and REGIONAL WEST MEDICAL CENTER, Defendants.	) Case No. 38269) ORDER OVERRULING) MOTION TO) RECONSIDER ORDER) OF OCTOBER 3,) 1996

On October 25, 1996, having examined the Motion to Reconsider the order of October 3, 1996, and the brief and supplemental brief submitted in support of the motion, the court makes these findings:

1. It is appropriate for the court to address the pleadings Sua Sponte to save aggravation and attorney fees for innocent parties to this case.
2. There is no pleadings in Nebraska trial court practice recognized as a "Motion to reconsider." It seems appropriate to treat such a pleading as a motion for new trial.
3. This court's order October 3, 1996, "that all motions, amended motions, objections and petitions for any relief whatsoever which were filed after September 5, 1991, are overruled and dismissed" was and is correct in all respects. See the reasoning of paragraph 5. below.
4. Mr. Waite has improperly styled the case to suit himself. The plaintiff in this case is and always has been "Glenn R. Waite, Personal Representative of the Estate of Harriet I. Waite, Deceased," No order of the court has been made permitting the substitution of a party plaintiff as is required by section 25-322 R.R.S. 1995. No

application for such relief was ever filed. The fact that the court was previously unaware of that spurious change and was taken in by the ruse does not help Mr. Waite now.

5. Mr. Waite persists in acting as an attorney, although he is not admitted to practice in Nebraska. Each pleading he filed compounds the offense which caused the dismissal of each of the lawsuits he has filed. The Nebraska Court of Appeals in Waite v. Carpenter, 3 Neb. App. 879, 533 N.W.2d 879 (1995), could not have been more plain about the reasons: "We affirm [in our original case] because we agreed with the district court that the pro SE personal representative was engaged in the unauthorized practice of law and that dismissal was the appropriate remedy and sanction."

5. The reminder from the court in that case that "Perhaps this is an appropriate time to remind Waite that it is the duty of the courts to prevent abuse of process and frivolous proceedings in the administration of justice," has gone unheeded by Mr. Waite. Enough is enough. This court will no longer ignore its duty in that regard.

IT IS THEREFORE ORDERED THAT Mr. Waite's "Motion to Reconsider Order Dated October 3, 1996," is denied.

IT IS FURTHER ORDERED THAT pursuant to the court's authority and duty as set forth above, patterned in part on the procedure set out in 24-318 R.R.S. 1995, the clerk of this court shall notify the county attorney of Scotts Bluff County, Nebraska, if any further pleadings are filed by Mr. Waite pro SE in this case or

any companion case. The county attorney is directed to make a complete investigation and if satisfied any contempt of court or unauthorized practice of law or any other criminal offense has been committed, to proceed promptly with the appropriate prosecution.

By the Court,

_____

Paul D. Empson

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER	)	NO. PR90-78
OF THE ESTATE	)	ORDER OF COMPLETE
HARRIET I. WAITE,	)	SETTLEMENT &
Deceased	)	DISTRIBUTION

The petition of Glenn R. Waite, Personal Representative and heir of decedent, filed herein, for a formal proceeding to adjudicate the final settlement and distribution of the above estate came on for hearing this this 15th day of May 1996 and the only person appearing was Glenn R. Waite; and

It appearing to the Court that on January 5, 1994 the Court entered a decree of heirship which named Peter A. Waite, spouse; Glenn R. Waite, natural son; Doris R. Butler, natural daughter; and Beverly E. Sipple, natural daughter; and as the sole and only heirs; and it is noted by the Court that Peter A. Waite, Doris R. Butler, and Beverly E. Sipple have renounced all interests in the estate assets; leaving other possible persons to take the estate by representation through

the heirs who have renounced their interests; and it appearing to the Court that Wanda Sipple Hall, Wendy Sipple, WaLinda Sipple, Michelle Warzecha, and Shannon Kadlec are granddaughters of the decedent and said persons having been notified pursuant to Neb. Rev. Stat. section 30-2220 (Cumm Supp.1993); and said persons have not appeared in this matter, and any other persons have been notified by publication pursuant to Nebraska law,

It is hereby Ordered, Adjudged, and Decreed that the Court does approve the petition of Glenn R. Waite for final settlement and does approve his previous distributions of estate assets.

FILED May 15, 1996
SHERIDAN COUNTY COURT

Charles Plantz
County Judge

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER	)	NO. PR90-78
OF THE ESTATE	)	DISTRIBUTION OF
HARRIET I. WAITE,	)	ESTATE ASSETS
Deceased	)	

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, pursuant to section 30-24,105 of the Neb. Rev. Stat. (Reissue 1989), assigns, transfers and releases all interests in the following assets:

Any and all property, real or personal, whereever situated; any and all causes of action, and any other estate assets, wherever situated,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and the sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. There are no other natural or legal heirs or interested persons in the estate. The decedent had no debts when she died and there have never been any claims filed against the personal representative.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a written instrument of Renunciation of Succession, Affidavit, and Assignment. this leaves Glenn R. Waite to be the sole surviving heir at law under intestate succession and sole distributee.

_____
Glenn R. Waite,
Personal Representative

STATE OF WYOMING) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R. waite and he acknowledged the above document and signed the execution of the above in my presence.

_____
Notary Public

Dated this the 1st day of November 1995.

FILED November 3, 1995
SHERIDAN COUNTY COURT

IN THE COUNTY COURT OF SHERIDAN COUNTY, NEBRASKA

IN THE MATTER OF THE ESTATE HARRIET I. WAITE, Deceased	))))	NO. PR90-78 DISTRIBUTION OF ESTATE ASSETS

COMES NOW, Glenn R. Waite, Personal Representative of the above decedent, pursuant to section 30-24,105 of the Neb. Rev. Stat. (Reissue 1989), assigns, transfers and releases all interests in the following assets:

the chose in actions involving a claim for negligence in the care and treatment of the Decedent, Harriet I. Waite,

to himself, Glenn R. Waite, individually, who is the sole heir at law under intestate succession and the sole beneficiary of the decedent's estate.

Glenn R. Waite, Personal Representative of the above decedent, being first duly sworn on oath, deposes and states the following based on personal knowledge:

Harriet I. Waite died intestate on April 17, 1989 and her only surviving spouse was Peter A. Waite, and her only surviving issue were Beverly E. Sipple, natural daughter; Doris R. Butler, natural daughter; and Glenn R. Waite, natural son. Peter A. Waite, Beverly E. Sipple, Doris R. Butler, and Glenn R. Waite are the sole and only heirs at law of the above decedent. There are no other natural or legal heirs or interested persons in the estate. The decedent had no debts when she died and there have never been any claims filed against the personal representative.

All heirs, excepting Glenn R. Waite, have filed with the clerk of this court a

written instrument of Renunciation of Succession, Affidavit, and Assignment. this leaves Glenn R. Waite to be the sole surviving heir at law under intestate succession and sole distributee.

_____
Glenn R. Waite,
Personal Representative

STATE OF WYOMING) ss.
COUNTY OF LARAMIE)

ACKNOWLEDGMENT:

Before me personally appeared Glenn R. waite and he acknowledged the above document and signed the execution of the above in my presence.

_____
Notary Public

Dated this the 29th day of November 1993.

FILED
November 30, 1993
SHERIDAN COUNTY COURT

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	)	NO. 44590
vs.	)	**SECOND AMENDED**
PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, SCOTTSBLUFF INTERNAL MEDICINE GROUP, and W. SCOTT CARPENTER, Defendants.	)	**PETITION FOR FOR DECLARATORY AND PRAECIPE FOR SUMMONS ON DEFENDANT CARPENTER**
	)	**JURY TRIAL DEMANDED**

Plaintiff hereby files his second amended petition, which supersedes all previously filed petitions, against the defendants in response to the demurrer of defendants Empson, Hippe, and Kortum dated February 21, 1997 as follows:

FIRST CAUSE OF ACTION

1. Plaintiff, Glenn R. Waite, is the sole heir and sole distributee of the estate of Harriet I. Waite, deceased, pursuant to the distribution of Estate Assets on November 29, 1993 and November 1, 1995 and pursuant to a court order dated May 15, 1996 in the County Court of Sheridan County, Nebraska. Plaintiff is a natural born citizen of the United States of America. He is a resident and citizen of the State of Wyoming and resides at 1202 West 28th St., Cheyenne, WY 82001. Plaintiff represents only himself and no other person or legal entity or personal representative other than himself. Petitioner appears **only** in his individual capacity pursuant to Neb. Rev. Stat. sections 30-24,106, 30-24,115 and 30-2451 (Reissue 1995). Plaintiff does not

represent the rights of the personal representative in his representative capacity.

2. Defendant, Paul D. Empson, is a District Judge of the Twelfth Judicial District of the State of Nebraska. Paul D. Empson resides at 817 East 8th St., Chadron, NE 69337. Plaintiff sues Paul D. Empson **only** in his individual capacity.

3. Defendant, Robert O. Hippe, is a District Judge of the Twelfth Judicial District of the State of Nebraska. Robert O. Hippe resides at 1018 East 35th St., Scottsbluff, NE 69361. Petitioner sues Robert O. Hippe **only** in his individual capacity. Anne Hippe, wife of Judge Robert Hippe, is the Chairsperson and director of the Practical Nursing School at Regional West Medical Center and Western Nebraska Community College in Scottsbluff, Nebraska.

4. Defendant, Alfred J. Kortum, is a retired District Judge of the Twelfth Judicial District of the State of Nebraska. Alfred J. Kortum resides at 1940 Seventeenth St., Scottsbluff, NE 69361. Petitioner sues Alfred J. Kortum **only** in his individual capacity.

5. Defendant, Regional West Medical Center, is an acute care general hospital doing business in the State of Nebraska. Anne Hippe, wife of Judge Robert O. Hippe, is the Chairsperson of the School of Practical Nursing at Western Nebraska Community College and Regional West Medical Center. Nursing students from the School of Practical Nursing, including Rebecca Bartlett, damaged the decedent, Harriet I. Waite. The corporation of Regional West Medical Center was a named defendant in case 38270. The business address of Regional West Medical Center is

4021 Avenue B, Scottsbluff, Nebraska 69361.

6. Defendant, Nancy Adams, was an employee of Regional West Medical Center from April 14, 1989 to April 17, 1989. Nancy Adams was designated as "defendant, Jane Doe, R. N. (medication record signed by Nancy Adams and Connie Mount)" in the original complaint filed April 8, 1991 in case 38270 filed in this court, and was designated as "defendant, Regional West Medical Center, Nursing Services, Jane Doe, REAL NAME UNKNOWN" in the first amended complaint filed May 16, 1991 in case 38270 filed in this court. Nancy Adams is a resident of the State of Nebraska and resides at 190047 University Street, Scottsbluff, Nebraska 69361.

7. Defendant, Scottsbluff Internal Medicine Group, is a professional group of Internal Medicine physicians doing business in Scottsbluff County, Nebraska. The professional group is organized and exists under the laws of the State of Nebraska. The Group's address is Regional West Medical Center Plaza, Two West 42nd Street, Suite 3100, Scottsbluff, Nebraska. Physician members of the group at the time professional services were rendered to Harriet I. Waite were Vincent Bjorling, M.D., W. Scott Carpenter, M.D., Terry Haney, M.D., Armando Mangana, M.D., William Packard, M.D., William Seiffert, M.D., and Todd S. Sorensen, M.D. Scottsbluff Internal Medicine Group is a named defendant in case 38279.

8. Defendant, W. Scott Carpenter, was a former member of the Scottsbluff Internal Medicine Group and is a named party in case 38279 and damaged the decedent at Chadron Community Hospital and at Regional West Medical Center and was

the physician who ordered the continuous morphine infusion to decedent, Harriet I. Waite, against her expressed wishes as alleged in case 38270. Defendant Carpenter's current address is 1222 W. Ives, Marshfield, Wisconsin and is a resident of the State of Wisconsin.

9. This is an action for declaratory judgment brought pursuant to Neb. Rev. Stat. section 25-21,149 for the purpose of declaring the rights, status, and other legal relations whether or not further relief is or could be claimed. Petitioner, individually, requests that his rights, status, or other legal relations affected by Neb. Rev. Stat. sections 7-101 and 7-110 (Reissue 1991), and sections 25-1401 to 25-1408 (Reissue 1995) and Article IV, U.S. Constitution, and Amendments 1, 5, and 14 of the U.S. Constitution be determined in this action. Petitioner seeks a declaration only of his individual rights which are distinct from his rights as personal representative of the decedent's estate in his representative capacity as they relate to cases 38270 and 38279 filed in the Scotts Bluff County District Court.

10. Jurisdiction of this action is based on Neb. Rev. Stat. section 25-1401 and 25-1403 (Reissue 1995) and under Articles IV and VI and Amendments one, five, and fourteen of the U.S. Constitution. Venue is proper because the underlying action or transactions occurred in Scotts Bluff County, NE and the Scotts Bluff County District Court is the Court of Record in cases 38270 and 38279.

11. Honorable Judge Paul D. Empson acted in case 38269 at the request of defendant, Robert O. Hippe. Judge Paul D. Empson was not assigned and has not

participated in cases 38270 and 38279. In Case 38269 filed in the District Court of Scotts Bluff County, Nebraska, Defendant, the Honorable Judge Paul D. Empson, directed, on October 25, 1996, that the clerk of this district court was to notify the county attorney, pursuant to Neb. Rev. Stat. section 24-318 (Reissue 1995), if any further pleadings are filed by Glenn R. Waite "pro se" in cases 38270 and 38279, the county attorney is directed to make a complete investigation and if any contempt of court or unauthorized practice of law or other criminal offense has been committed, to proceed promptly with the appropriate prosecution and file his report in the court records without a notice and the opportunity for a hearing to Glenn R. Waite. Neb. Rev. Stat. section 24-318 (Reissue 1995) provides Glenn R. Waite with **no** opportunity of a notice and **no** opportunity for an impartial hearing **before** the county attorney files his report in the court records in cases 38270 and 38279 which is guaranteed by the 5th and 14th Amendments of the U.S. Constitution.

12. The actual controversy capable of judicial decision in this first cause of action is:

Plaintiff claims that, pursuant to Article IV, and the 5th and 14th Amendments to the U.S. Constitution, Neb. Rev. Stat. section 24-318 (Reissue 1995) is overbroad and is repugnant to and violates the U.S. Constitution because it does not permit a notice and the opportunity for a hearing before an impartial decision maker to this Plaintiff before the judge directs that the county attorney's written report is filed with the clerk of the district court and by him

made a part of the records of the court in the action.

Defendants claim that, pursuant to the Article IV, and the 5th and 14th Amendments to the U.S. Constitution, Neb. Rev. Stat. section 24-318 (Reissue 1995) is **not** repugnant to and **does not** violate the U.S. Constitution.

13. There has **not** yet been any action filed which determines this controversy between the parties and the matters are capable of present judicial determination by this court which is the court of record in cases 38270 and 38279.

SECOND CAUSE OF ACTION

14 Plaintiff, incorporates herein by reference the allegations of paragraphs one through thirteen of his second amended petition as if fully set forth herein. 15. On April 8, 1991, case 38270 was filed and is a survival action previously owned by the estate of Harriet I. Waite, deceased, and presently owned by this plaintiff. In case 38270 filed in this court, this plaintiff (a person distinct from the personal representative in his official capacity), individually, filed a "petition for hearing" which the Court has **not** disposed of by entering a final appealable order in the action which actually disposes of the petition. Furthermore, there is absolutely **no** order contained in the court record which disposes of this plaintiff's amended petition dated December 7, 1993. The "memorandum decision" dated December 9, 1993 was signed by defendant, Hippe, when there was a pending motion to recuse him, and is merely an order sustaining a special appearance and is **not** a final appealable order and contains absolutely

no orders disposing of the amended petitions filed October 15, 1993 and December 9, 1993. There is absolutely no order contained in the court records which disposes of the defendant's "notice of irregularly issued summons and special appearance in the alternative" filed October 11, 1994 and no order which disposes of the plaintiff's "motion to amend summons issued April 8, 1991" which is dated February 22, 1995. The order overruling the motion for new trial dated March 1, 1994 is a nullity since it was directed to the nonfinal "memorandum decision" dated December 9, 1993.

16. The actual controversy capable of judicial decision in this second cause of action is:

Glenn R. Waite claims that (1) there is no actual court order contained in the court records in case 38270 which disposes of the "petition for hearing" filed by this plaintiff; (2) the "memorandum decision" dated December 9, 1993 in case 38270 is merely an order sustaining a special appearance and is not a final appealable order; (3) there are no orders contained in the court records which dispose of the amended petitions filed October 15, 1993 and December 9, 1993; (4) there is no order contained in the court records which disposes of the defendant's "notice of irregularly issued summons and special appearance in the alternative" filed October 11, 1994; (5) there is no order contained in the court records which disposes of the plaintiff's "motion to amend summons issued April 8, 1991" which is dated February 22, 1995; and (6) the order overruling the motion for new trial dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a

nullity.

Defendants claim that (1) the court in case 38270 has actually disposed of the "petition for hearing" filed by this plaintiff; (2) the "memorandum decision" dated December 9, 1993 which sustains a previous special appearance is a final appealable order; (3) there are orders contained in the court records which dispose of the amended petitions filed October 15, 1993 and December 9, 1993; (4) there is an order contained in the court records which disposes of the defendant's "notice of irregularly issued summons and special appearance in the alternative" filed October 11, 1994; (5) there is an order contained in the court records which disposes of the plaintiff's "motion to amend summons issued April 8, 1991" which is dated February 22, 1995; and (6) the order overruling the motion for new trial dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a valid final appealable order.

17. In case number 4:CV95-3447, Waite v. Regional West Medical Center, et. al., filed in the U.S. District Court for the District of Nebraska, the court entered a "Memorandum and Order" dated July 25, 1996 in which the Court abstained, under federalism and comity, from exercising any jurisdiction over the present controversy in cases 38270 and 38279, even though the controversy involves a federal question. The court noted that a state actor had <u>not</u> been made a party to that action. The District Court of Scotts Bluff County, Nebraska, is the court of record in case 38270 and has jurisdiction over the present controversy which is capable of judicial determination of both the state

and federal questions.

THIRD CAUSE OF ACTION

18. Plaintiff, incorporates herein by reference the allegations of paragraphs one through seventeen of his second amended petition as if fully set forth herein.

19. On April 11, 1991, case 38279 was filed and is a survival action previously owned by the estate of Harriet I. Waite, deceased, and presently owned by this plaintiff. In case 38279, this plaintiff (a person distinct from the personal representative in his official capacity), individually, filed a "petition for hearing" which the Court has **not** disposed of by entering a final appealable order in the action disposing of the petition. Furthermore, there is absolutely **no** order contained in the court records which disposes of this Plaintiff's amended petition dated December 8, 1993. The defendants' motion to strike, or in the alternative, to make more definite and certain, affects the plaintiff's individual rights and the Court has **not** disposed of the motion by entering a final appealable order in the action and the court has **not** yet disposed of the Plaintiff's Amended Petitions filed October 28, 1993 and December 9, 1993. The "memorandum decision" dated December 9, 1993 signed by defendant, Hippe, is merely an order overruling the motions to strike papers and to vacate judgment of dismissal rendered against the Personal Representative (**not** against Glenn R. Waite, individually) and did not dispose of the amended petition filed October 28, 1993 and is **not** a final appealable order against this plaintiff. The court has **not**

yet disposed of the defendant's "request for hearing" dated March 15, 1994. The order overruling the motion for new trial dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a nullity. On March 21, 1994, the Plaintiff filed an amended Petition to vacate the nonfinal "memorandum decision" alleging that the defendants obtained the "memorandum decision of December 9, 1993" by filing perjured testimony in the October 29, 1993 hearing by stating that the plaintiff was a participant in a purported August 9, 1991 hearing in case 38269 (**not** 38279). The truth is that the plaintiff <u>was not</u> a participant in any August 9, 1991 hearing in any capacity. It was claimed by attorney Novotny in his perjured testimony that at that hearing the Court ordered that all motions in all other related pending cases would be heard September 3, 1991. The truth is that the plaintiff <u>did not</u> receive this prior notice in 38279 and the truth is that cases 38269 and 38279 were never consolidated and are separate and distinct causes of action and the truth is that the plaintiff did not receive any prior notice of the August 9, 1991 hearing in case 38269 **nor** was he a party participant in the hearing **nor** did he receive any prior notice that "all motions" in case 38279 would be heard at the September 3, 1991 hearing with the other cases (however, the defendants' motion to strike, or in the alternative, to make more definite and certain was **not** heard on September 3, 1991 or any other time) **nor** was there any August 9, 1991 hearing held in case 38279. The altered purported <u>copy</u> of a journal entry filed in case 38279 and referred to in the Clerk's certification was from

case 38269 **not** 38279. Case 38269 is a wrongful death action whereas 38279 is a survival action and the cases were never consolidated. The plaintiff did not receive a copy of the altered purported copy of the journal entry and had absolutely **no** knowledge of the altered copy of the journal entry until October 1993 (over two years later) when he filed a "motion to strike papers from files". On November 10, 1995, Attorney Mark Novotny sent a letter to Judge Alfred Kortum. The letter urges Judge Kortum to **not** issue an order or journal entry so as to dispose of the pending motions so that this plaintiff might file an appeal in his individual capacity.

20. The actual controversy capable of present judicial determination in this third cause of action is:

Glenn R. Waite claims that (1) there is **no** actual court order contained in the court records in case 38279 which disposes of this plaintiff's "petition for hearing"; (2) the "memorandum decision" dated December 9, 1993 in case 38279 is **not** a final appealable order; (3) there are **no** orders contained in the court records which dispose of the amended petitions filed October 28, 1993 and December 9, 1993; (4) there is **no** actual court order contained in the court records in case 38279 which disposes of the "request for hearing" filed by the defendants; (5) there is **no** actual order contained in the court records which disposes of this plaintiff's motion to vacate nonfinal "memorandum decision" dated March 21, 1994; and (6) the order overruling the motion for new trial dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a

nullity.

Defendants claim that (1) the court in case 38279 has disposed of this plaintiff's "petition for hearing" by entering an order which actually disposes of the petition; (2) the "memorandum decision" dated December 9, 1993 is a final appealable order; (3) there are orders contained in the court records which dispose of the amended petitions filed October 28, 1993 and December 9, 1993; (4) there is an order contained in the court records which disposes of the "request for hearing" filed by defendants; (5) there is an order contained in the court records which disposes of this petitioner's motion to vacate dated March 21, 1994; and (6) the order overruling the motion for new trial dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a valid final appealable order.

21. In case number 4:CV95-3447, Waite v. Regional West Medical Center, et. al., filed in the U.S. District Court for the District of Nebraska, the court entered a "Memorandum and Order" dated July 25, 1996 in which the Court abstained, under federalism and comity, from exercising any jurisdiction over the present controversy which involves a federal question. The court noted that a state actor had <u>not</u> been made a party. The District Court of Scotts Bluff County, Nebraska, is the court of record in case 38279 and has jurisdiction over the present controversy which is capable of judicial determination.

FOURTH CAUSE OF ACTION

22. Plaintiff, incorporates herein by reference the allegations of paragraphs

one through twenty-one of his amended petition as if fully set forth herein.

23. On April 8, 1991, case 38270 was filed. On April 11, 1991, case 38279 was filed. The cases were assigned to defendant, Hippe, who has **not** certified his disqualification in the cases and there is **no** written waiver permitting him to preside in the cases. The motions to recuse him have not been disposed of by the Court. In case 38270, on July 19, 1991, defendant, Regional West Medical Center, filed a "Motion to Strike Pleadings and to Dismiss" claiming that the action was being conducted by Mr. Waite in a representative capacity and not in an individual capacity. There is **no** order contained in the court records which disposes of the motion. This motion has not been converted into a motion for summary judgment and there was **no** motion for summary judgment filed in case 38270. In case 38279, there was a motion for summary judgment filed, but there were **no** affidavits attached to the motion and none were filed until the day of hearing on September 3, 1991. On September 3, 1991, Mr. Alexander Davison, a Nebraska Attorney, entered a general appearance for the personal representative in cases 38267, 38268, 38269, 38271, and 38279 but not for Glenn R. Waite, individually, since Glenn R. Waite, individually, could not be made a party until the county probate court determined the person or persons entitled to receive the proceeds from any wrongful death action or until the estate had been distributed. I was personally present (as personal representative) at the September 3, 1991 hearing and the only issue heard by Judges Robert Hippe and Alfred Kortum on

September 3, 1991 was whether or not there was a genuine issue as to any material fact that the pleadings filed by the personal representative were a nullity. Case 38270 was **not** heard on September 3, 1991 with the other cases. On September 5, 1991, the Scotts Bluff County District Court in case 38279 rendered a summary judgment of dismissal in favor of defendant Carpenter, but not in favor of Regional West Medical Center since that defendant had not filed any motion for summary judgment and the motion to strike pleadings and to dismiss had not been converted into a motion for summary judgment and that defendant was not made a party in case 38279. The summary judgment of dismissal was rendered only against the personal representative. There was absolutely no judgment declaring that Glenn R. Waite, individually, was not the sole heir of Harriet I. Waite, deceased, nor was there any judgment against Glenn R. Waite, individually. The Court on Sepember 5, 1991 sustained defendant Carpenter's motion for summary judgment without disposing of the defendants' motion to strike, or in the alternative, to make more definite and certain.

24. On October 27, 1992, the Nebraska Court of Appeals, in Waite v. Carpenter, et. al., 1 Neb. App. 321, only in cases 38267, 38268, and 38271, expressly concluded that Glenn R. Waite, individually, was **not** the sole heir in the matter of the estate of Harriet I. Waite, deceased. Glenn R. Waite, individually, was not made a party to the action, was not served with any process, did not enter any voluntary appearance prior to October 27, 1992, and was **not** represented in the action by any other party to the action.

The personal representative's duties do not include representing the individual rights of the decedent's heirs. The only plaintiff-appellant was the personal representative in his representative capacity. The Nebraska Court of Appeals, in Waite v. Carpenter, et. al., 1 Neb. App. 321, only decided cases 38267, 38268, and 38271 in regard to the rights of the personal representative in his representative capacity and **did not** decide cases 38270 and 38279 or the rights of this Plaintiff as the sole distributee of the estate of Harriet I. Waite. The decedent's estate was distributed **after** October 27, 1992. Such judgment by the Nebraska Court of Appeals is **not** res judicata to the pending issues in cases 38270 and 38279 because (1) pursuant to U.S. Supreme Court precedent, Res Judicata is no defense where, between the first judgment and the second action, there has been an intervening judicial decision or change in the law, creating an altered situation; and (2) the Nebraska Court of Appeals under the Nebraska Constitution and laws had absolutely no original subject-matter jurisdiction to act as a probate court drawing to itself the estate res, and exercising the power of determining that Glenn R. Waite, individually, is **not** the sole heir of the decedent's estate and, pursuant to U.S. Supreme Court precedent, the court first exercising jurisdiction of the decedent's property may exercise that jurisdiction over the property interest to the exclusion of the other court. The Nebraska Court of Appeal's judgment is based on Neb. Rev. Stat. sections 7-101 (Reissue 1991) which is repugnant to and violates the 1st, 5th and 14th amendments to the

U.S. Constitution because:

Neb. Rev. Stat. section 7-101 is overbroad and contains absolutely no provision that guarantees a person his U.S. Constitutional right to petition the government for redress of grievances and his due process of law in a civil action and allows a judge to determine the fact issue of whether the person who filed the action or proceeding is in fact a party to the action or proceeding without a "notice and the opportunity for a hearing before an impartial decision maker" as guaranteed by the 5th and 14th Amendments to the U.S. Constitution.

25. In cases 38270 and 38279, Judge Robert O. Hippe's wife has a direct and substantial financial interest in the results of the lawsuits in that she is the chairsperson and officer of the Practical Nursing School being jointly administered by Western Nebraska Community College and Regional West Medical Center and is a part of the corporate structure of the corporation, Regional West Medical Center. Nursing Students, including Rebecca Bartlett, damaged the decedent, Harriet I. Waite, and such damage is imputable to the corporation of Regional West Medical Center of which Anne Hippe, wife of Judge Robert Hippe, is the Chairsperson in the practical nursing department. There has never been a written waiver filed permitting Judge Robert O. Hippe to sit as judge in the cases and defendant, Hippe, has never filed any document certifying his disqualification. In cases 38267, 38268, and 38271 filed in the Scotts Bluff County District Court defendant, Hippe, sat as Judge on September 3, 1991 and no written waiver had been filed permitting Judge Hippe to

preside and no document has been filed certifying defendant Hippe's disqualification. In cases 38267 and 38268, there is absolutely no order contained in the court records which disposes of this plaintiff's amended petitions filed December 17, 1993 in case 38267 and filed January 19, 1994 in case 38268 in the Scotts Bluff County District Court.

26. The actual controversy capable of present judicial determination between the parties in this fourth cause of action is as follows:

Glenn R. Waite, individually, claims that (1) pursuant to Article IV and the 1st, 5th, and 14th Amendments to the U.S. Constitution, Neb. Rev. Stat. section 7-101 (Reissue 1991) is repugnant to and violates the United States Constitution because it commands a state judge to stop the filing of pleadings or other papers in a proceeding or action, i.e. a litigant's right of access to the courts, without compliance with Article IV and Amendments one, five, and fourteen of the U.S. Constitution to legally determine if the person who signed the pleadings or papers is in fact a party to the action or proceeding; and (2) the Order of Complete Settlement and Distribution filed in the County Court of Sheridan County, Nebraska on May 15, 1996 which determined that Glenn R. Waite, individually, is the sole heir and sole distributee of the decedent's estate, is res judicata, not the Court of Appeals decision in Waite v. Carpenter, 1 Neb. App. 321, on the issue of whether Glenn R. Waite, individually, is a "party to the action or proceeding" in cases 38270 and 38279 filed in the Scotts Bluff County District Court.

The Defendants claim that (1) Neb. Rev. Stat. section 7-101 (Reissue 1991) is not repugnant to and do not violate the 1st, 5th, and 14th Amendments to the United States Constitution; and (2) the Court of Appeals decision in Waite v. Carpenter, 1 Neb. App. 321, on the issue of whether Glenn R. Waite, individually, is a "party to the action or proceeding" in cases 38270 and 38279, is res judicata, not the Order of Complete Settlement and Distribution filed in the County County of Sheridan County, Nebraska, on May 15, 1996 which determined that Glenn R. Waite, individually, is the sole heir and sole distributee of the decedent's estate.

27. There has not been any previously filed action which determines these issues as they relate to cases 38270 and 38279 and therefore the present controversy in this fourth cause of action is capable of present judicial determination.

WHEREFORE, Petitioner earnestly prays that:

1) This Court will enter a declaratory judgment which states that Neb. Rev. Stat. section 24-318 (Reissue 1995) is overbroad and is repugnant to and violates the U.S. Constitution because it contains no provision for a notice and the opportunity for a hearing before an impartial decision maker to Waite before the judge directs that the written report is filed with the clerk of the district court and by him/her made a part of the records of the court in the action.

2) This Court will enter a declaratory judgment specifying that (1) there is no actual court order contained in the court records in case 38270 which disposes of the this plaintiff's "petition for hearing"; (2) the "memorandum

decision" dated December 9, 1993 in case 38270 is merely an order sustaining a special appearance and is **not** a final appealable order; (3) there are **no** orders contained in the court records in case 38270 which dispose of the amended petitions filed October 15, 1993 and December 9, 1993; (4) there is **no** order contained in the court records in case 38270 which disposes of the "notice of irregularly issued summons and special appearance in the alternative" filed October 11, 1994; (5) there is **no** order contained in the court records in case 38270 which disposes of the "motion to amend summons issued April 8, 1991" which is dated February 22, 1995; and (6) the order overruling the motion for new trial in case 38270 dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a nullity.

3) The Court will enter a declaratory judgment specifying that (1) there is **no** actual court order contained in the court records in case 38279 which disposes of this plaintiff's "petition for hearing"; (2) the memorandum decision" dated December 9, 1993 in case 38279 is **not** a final appealable order; (3) there are **no** orders contained in the court records in case 38279 which dispose of the amended petitions filed October 28, 1993 and December 9, 1993; (4) there is **no** actual court order contained in the court records in case 38279 which disposes of the "request for hearing" filed by defendants; (5) there is no actual order contained in the court records in case 38279 which disposes of this petitioner's motion to vacate nonfinal order dated March 21, 1994; and (6) the order overruling the motion for new trial in

case 38279 dated March 1, 1994 which was directed to the nonfinal "memorandum decision" is a nullity.

4) This Court will enter a declaratory judgment specifying that plaintiff, Glenn R. Waite, is entitled, under under Article I, sections 3 and 24 of the Nebraska Constitution, to a valid final appealable order in cases 38270 and 38279 so that the pending issues might be heard by a court of last resort.

5) This Court will enter a declaratory judgment specifying that (1) pursuant to the 1st, 5th, and 14th Amendments to the U.S. Constitution, Neb. Rev. Stat. section 7-101 (Reissue 1991) is overbroad and is repugnant to and violates the United States Constitution because it contains absolutely no provision that guarantees Waite his U.S. Constitutional right to petition the government for redress of grievances and his due process of law to a notice and the opportunity for a hearing before an impartial decision maker in cases 38270 and 38279 to legally determine if he is in fact a party to the action or proceeding; and (2) the Order of Complete Settlement and Distribution filed in the County Court of Sheridan County, Nebraska on May 15, 1996 which determined that Glenn R. Waite, individually, is the sole heir and sole distributee of the decedent's estate, is res judicata, **not** the Court of Appeals decision in Waite v. Carpenter, 1 Neb. App. 321, on the issue of whether Glenn R. Waite, individually, a person distinct from the personal representative in his representative capacity is a "party to the action or proceeding"in cases 38270 & 38279.

6) The court grant such other relief

as may be proper under Neb. Rev. Stat. section 25-21,149 (Reissue 1995) and under Neb. Rev. Stat. section 7-110 (Reissue 1991), sections 25-1401 to 25-1408 (Reissue 1995).

7) The Court grant him a jury trial on all issues of fact in this action.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

Glenn R. Waite, being first duly sworn upon his oath, deposes and states that he is the plaintiff in this action and that he has read the foregoing second amended petition, and knows the contents therein, and according to his knowledge and belief the facts therein are true. Glenn R. Waite represents only himself and represent no other person or entity other than his own interests. Glenn R. Waite is a licensed physician and has reviewed the medical records of the decedent, Harriet I. Waite, and states that there is a substantive claim by the plaintiff against the defendants.

Glenn R. Waite

Subscribed and sworn to before me this the 25th day of Febr. 1997.

Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, SCOTTSBLUFF INTERNAL MEDICINE GROUP, and W. SCOTT CARPENTER, Defendants.	)	NO. 44590 **MOTION TO VACATE ORDER DATED MAY 2, 1997**

COMES NOW, Plaintiff, Glenn R. Waite, pursuant to Nev. Rev. Stat. section 25-2001, and respectively requests this Court to vacate the order dated May 2, 1997 for mistake, neglect, or omission of the clerk or for unavoidable casualty or misfortune, preventing the party from prosecuting or defending.

Plaintiff states that he called the Clerk's office today to see when the Judge was going to rule on the defendants' demurrer. Carol answered the phone and said I needed to speak with Ann. In about one-half minute Ann Rosenberry, Clerk of Court, came on the phone and stated that there was an order for the sustaining of a general demurrer on May 2, 1997 and Ann stated she mailed a copy of the order to me. I stated that I have never received this order. She then stated that I needed to complain to the post office. I then went to the general post office in Cheyenne, WY and filled out complaint form. I also talked to two supervisors at the post office. They both stated that if the Clerk who claims she mailed this letter on May 2, 1997 to my address at

1202 West 28th St. did not mail the letter by certified or registered mail, there is no way for the post office to prove that the clerk in fact mailed the letter as she stated since their post office handles a million pieces of mail a day.

Neb. Rev. Stat. section 25-2001 authorizes the Court to vacate or set aside an order for mistakes, omissions, or neglect of the Clerk and for unavoidable casualty or misfortune, preventing the party from prosecuting or defending such as being able to file an appeal within 30 days of the Court's final Order. If the Clerk of Court did in fact mail the Order as she claims, still there is no way to prevent the unavoidable casualty or misfortune of the U.S. Postal Service from loosing a piece of mail. The Judge of this Court and the defending parties should admit that there are rare instances where a piece of mail is lost for over 30 years in the mail system and it is possible that a piece of mail could get delayed over 30 days causing a person to loose his appeal rights. This is one of the cases which should fall within the court's authority to vacate its final order for either mistake, neglect, or omission of the clerk or for unavoidable casualty or misfortune, preventing the party from prosecuting or defending such as being able to appeal a final order.

I hereby request that this Court allow me an open Court hearing on this matter as provided by Neb. Rev. Stat. section 25-2003 (Reissue 1995) and pursuant to the fourteenth Amendment to the U.S. Constitution: Simmons v. Lincoln, 176 71, 125 N.W.2d 63 (1963).

Plaintiff hereby attaches his own affidavit in support of this motion.

WHEREFORE, Plaintiff prays that this Court will vacate or set aside its order dated May 2, 1997.

Glenn R. Waite,
Plaintiff,
1202 West 28th St.
Cheyenne, WY 82001
(307) 634-8712

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, SCOTTSBLUFF INTERNAL MEDICINE GROUP, and W. SCOTT CARPENTER, Defendants.	)	NO. 44590 AFFIDAVIT OF GLENN R. WAITE

STATE OF WYOMING) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, first duly sworn upon his oath, makes this affidavit upon personal knowledge and state the following under penalty of perjury:

1. I am the plaintiff in this case and seek a judicial resolution of this matter involving my federal rights.

2. On or about March 12, 1997, I filed my objection to the defendants' demurrer and sent a brief to Judge Gless.

3. The Judge was asked to review the matter on the briefs of the parties without oral argument.

4. I patiently waited for a ruling on the demurrers and since there was no activity in the case for over two months,

I telephoned the Scotts Bluff County Clerk's Office on June 13, 1997 and asked when the Judge was going to rule on the demurrer filed by the defendants. Carol answered the phone and asked that I speak with Ann Rosenberry, Clerk of Court. In about one-half minute Ann Rosenberry came on the phone line. She stated that the Judge sustained the defendants' demurrer on May 2, 1997 and that she sent me a copy. I stated that I had not received a copy. I asked what address she sent it to and she stated 1202 West 28th St., Cheyenne, WY 82001. I again stated that I had not received a copy of the Judge's Order. She again stated that she mailed it to me and that I would have to talk with the post office about the matter. So, I went to the main post office and filled out a complaint form. Attached is exhibit A. I also spoke with two postal supervisors since the postmaster was away on a doctor's appointment. I explained the situation to the postal supervisors and they asked if the Clerk's letter was sent by certified or registered mail. I stated no, not to my knowledge. They then stated that they handle a million pieces of mail a day and there is absolutely no way to prove that the Scotts Bluff County Clerk in fact mailed the letter as she stated and if it were mailed there is no way to know if the letter got lost in the system or even whether someone removed the letter from my mail box.

5. I state under penalty of perjury that I have not as of today received the Clerk's letter containing the Judge's Order in case 44590 regarding the defendants' demurrer.

FURTHER AFFIANT SAYETH NOT.

_____
Glenn R. Waite

Subscribed and sworn to before me this the ___ day of June 1997.

_____
Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, NANCY ADAMS, SCOTTSBLUFF INTERNAL MEDICINE GROUP, and W. SCOTT CARPENTER Defendants.	))))))))))	NO. 44590 **SUPPLEMENTAL MOTION TO VACATE ORDER DATED APRIL 30, 1997 AND FILED MAY 2, 1997**

COMES NOW, Petitioner, Glenn R. Waite, and hereby files his supplemental motion to vacate order pursuant to Neb. Rev. Stat. section 25-2001 et. seq. (Reissue 1995).

I, Glenn R. Waite, state that since I signed and filed my motion to vacate order dated May 2, 1997, I have received <u>for the first time</u> the "Order sustaining general demurrer and order of dismissal". This was contained in a letter post-marked June 13, 1997 from Ann Rosenberry, Clerk of this Court. As of this date, I <u>have not</u> received any letter post-marked on or about May 2, 1997 addressed to me from the Clerk of Court. Therefore, I hereby supplement my previous "motion to vacate order dated May 2, 1997" and filed June 16, 1997 for the following additional reasons:

1. Irregularity in the proceedings. The Order dated April 30, 1997 is irregular and contrary to the procedure and practice of the Courts as follows:

a. the Court conducted its own ex parte investigation of the facts and considered its own evidence outside the pleadings and failed to provide this plaintiff with a ten day notice and opportunity for a hearing pursuant to Neb. Rev. Stat. section 25-1332 (Reissue 1995) and the 14th Amendment to the U.S. Constitution so the plaintiff might object to the evidence or admit further evidence on the merits of the controversy. The District Court has no authority to proceed to dismiss case when the notice provisions of a summary dismissal proceeding are not complied with; Curley v. Curley, 214 Neb. 780, 336 N.W.2d 103 (1983).

b. the Court considered evidence on the merits of the controversy rather than confine itself to the defects on the face of the second amended petition. A demurrer goes only to those defects which appear on the face of the petition, and in ruling on a demurrer, evidence cannot be considered; Hynes v. Hogan, 251 Neb. 404, 558 N.W.2d 35, 39 (1997). The merits of a general demurrer to a petition must be determined from the allegations of the petition alone; State ex. rel. Johnson v. Consumers Public Power Dist., __Neb.__, 5 N.W.2d 202 (1942). A general demurrer admits all allegations of fact which are issuable, relevant, material, and well pleaded; Christopherson v. Christopherson, 177 Neb. 414, 129 N.W.2d 113 (1964).

Plaintiff renews his request for a hearing in open court on the merits of this supplemental motion to vacate Order

pursuant to Neb. Rev. Stat. section 25-2001 et. seq. (1995).

WHEREFORE, Plaintiff moves this Court to vacate or set aside its Order dated April 30, 1997 and filed May 2, 1997.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CASE NO. 38270-H

GLENN R. WAITE, Personal Representative of Harriet I. Waite, deceased, Plaintiff,	)	SPECIAL APPEARANCE
v.	)	
REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	)	

Defendant Regional West Medical Center hereby enters a special appearance for the purpose of objecting to the jurisdiction of the Court over its person.

REGIONAL WEST MEDICAL CENTER, Defendant,

By_____

Robert P. Chaloupka #10653
Van Steenberg, Chaloupka, Holyoke, Pahlke, Smith, Snyder, and Hofmeister,P.C
1904 First Avenue
P.O. Box 1204
Scottsbluff,Nebraska 69363
Telephone: (308) 635-3161

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	)	AFFIDAVIT OF ALYCE MAUPIN

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

Alyce maupin, after first being duly sworn upon her oath, states as follows:

1. That Affiant is the Senior Vice-President of Patient Services at Regional West Medical Center.

2. That Affiant is familiar with the corporate structure of Regional West Medical Center and its subdivisions.

3. That Regional West Medical Center Nursing Service is not a separate entity in and of itself, but is merely a department within Regional West Medical Center.

FURTHER AFFIANT SAYETH NOT.

_____
Alyce Maupin

My commission expires:

_____
Notary Public

Case No. 38270
IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	)	JOURNAL ENTRY

Now on this 28th day of June, 1991 the Special Appearance filed by the Defendants herein came on for consideration by the Court. the hearing was held by telephone conference with Glenn R. Waite appearing on behalf of himself and Rhoda R. Flower appearing for the Defendant.

The Court, having reviewed the Affidavit of Alyce Maupin and considering the comments of Plaintiff and Defendants' counsel, finds the Defendant's Special Appearance should be sustained.

IT IS SO ORDERED.

BY THE COURT.

signed Robert O. Hippe
District Judge

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	)	No. 38270 MOTION TO STRIKE PLEADINGS AND TO DISMISS; TO TAKE UP THIS MOTION BEFORE OTHERS AND FOR AN EXTENSION OF TIME TO OBJECT TO DISCOVERY

The defendant, Regional West Medical Cneter, hereby moves this Court to strike all pleadings filed pursuant to the signature of Glenn Waite and to dismiss any actions or suits instituted based on documents signed by Glenn Waite for the reason that said individual is not admitted to the Bar of the Supreme Court of Nebraska and this action is being conducted by Mr. Waite in a representative capacity and not in an individual capacity. The pleadings filed in this matter by Mr. Waite constitute the unauthorized practice of law and are a nulllity.

The defendant further moves the Court to take up this Motion before any other matters; to stay any further prosecution of this or any other case filed by Mr. Waite; and to extend any deadlines that the defendant might otherwise have in which to object to plaintiff's discovery documents.

An affidavit of defendant's counsel in support hereof is attached hereto and incorporated herein by reference.

REGIONAL WEST MEDICAL CENTER
Defendant
By: _____
James A. Snowden #13927
Dated 17 July 1991

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	)	
vs.	)	ORDER NUNC
REGIONAL WEST MEDICAL CENTER,	)	PRO TUNC
NURSING SERVICE, Defendants.	)	

For the purpose of clarifying the record the Court hereby supplements and amends its previous Journal Entry on or about June 28, 1991, regarding the special appearance filed on behalf of the purported defendant.

The special appearance is sustained as previously ordered and the case is hereby dismissed for the reason that the evidence adduced established that there is no such legal entity as "Regional West Medical Center Nursing Service" and another suit on file against Regional West Medical Center contains substantially the same allegations.

DATED_____1991

BY THE COURT:

signed Robert O. Hippe
District Judge

IN THE DISTRICT COURT FOR
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE	*	
Plaintiff,	*	No. 38270
vs.	*	
REGIONAL WEST MEDICAL	*	**MOTION TO VACATE**
CENTER, ET. AL.,	*	**ORDER NUNC**
Defendants.	*	**PRO TUNC**

COMES NOW, Plaintiff, GLENN R. WAITE, personal representative of the his mother, Harriet I. Waite, sole heir at law under intestate succession, and the only real party in interest, and moves this court to vacate its ORDER NUNC PRO TUNC for the reasons that such order was entered without jurisdiction of this court and without due notice to this party and therefore is coram non judice and void. Plaintiff, GLENN R. WAITE, was not given an opportunity to be heard in regard to this order nunc pro tunc and this constituted a denial of due process of law. The ORDER NUNC PRO TUNC entered on the records of the court on October 28, 1991 works a substantial prejudice to this plaintiff's right to recover damages on behalf of the decedent's estate and his right to his interests as the sole heir of the estate under intestate succession.

Plaintiff, GLENN R. WAITE, further states that he was a participant at the June 28, 1991 telephone conference and that the only issue discussed was the Special Appearance filed by the Defendants. No other issues were discussed and there was no evidence adduced to establish that there was another suit on file against Regional West Medical Center containing the same allegations. GLENN R. WAITE has attached

an affidavit and asks the court to take notice thereof.

Plaintiff, GLENN R. WAITE, further states that this court has jurisdiction over his cause of action. This court has personal jurisdiction over the plaintiff because he filed his cause of action in this court. He has a right of action because he is the personal representative of his deceased mother and he has a right to represent his own interests in court without an attorney since he is the only real party in interest. He is the sole heir at law under intestate succession since all heirs, excluding himself, have filed with the clerk of the Sheridan County Probate Court an irrevocable renunciation of succession under section 30-2352 of the Neb. Rev. Stat. (Reissue 1989). There are no liabilities or debts against the estate of the intestate and therefore he is not representing any creditors. The limitation on the presentation of claims has expired. Therefore he is entitled to all of the avails of the lawsuit and is the only real party in interest. This court has personal jurisdiction over the defendant, Regional West Medical Center. Even though the defendant was defectively described in the caption, it was named as defendant in the body of the original petition and Alyce Maupin, Senior Vice President of Patient Services was personally served on April 9, 1991 at Regional West Medical Center. Furthermore, the attorney for the defendant filed a Motion for Non-Resident Cost Bond on May 6, 1991 and a Motion to Strike Pleadings on July 19, 1991 and this invoked the power of the court on a question other than personal jurisdiction. This court has subject matter jurisdiction

because the subject matter involves a cause of action which can be determined by this court and the complaint for damages is in excess of $10,000.00. The venue is proper because the Plaintiff's cause of action occurred in Scotts Bluff County, Nebraska and the defendant provides goods and services in Scotts Bluff County, Nebraska.

This case is one in which the court dismissed the case prior to the defendants filing an answer as specified in section 25-811 of the Neb. Rev. Stat. (Reissue 1989) and the case was never heard on its merits.

Plaintiff, GLENN R. WAITE, further states that section 25-2001 of the Neb. Rev. Stat. (Reissue 1989) allows this court to vacate or modify its own judgments or orders after the term at which they were entered for, among other things, mistake, neglect, or omission of the clerk and a proceeding to vacate on this ground may be brought within three years. District Judge Robert O. Hippe signed the Order Nunc Pro Tunc on October 30, 1991 and the Clerk of the District Court failed to send me notice by mail within three days as required by Nebraska Law. Furthermore, I did not receive notice in time to file a motion for a new trial nor in time to file an appeal.

Plaintiff has attached his own affidavit to this motion.

Plaintiff, GLENN R. WAITE, has attached hereto a brief in support of his motion to vacate the order nunc pro tunc.

WHEREFORE, Plaintiff, GLENN R. WAITE, prays that the Order Nunc Pro Tunc entered by this Court on October 30, 1991 be voided and held as a nullity because such order works a substantial prejudice to his

rights as sole heir at law under intestate succession. Plaintiff prays that he be permitted to plead further in this action.

GLENN R. WAITE,
Plaintiff,
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

IN THE DISTRICT COURT FOR SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, Defendant.	*	No. 38270 **AFFIDAVIT OF GLENN R. WAITE**

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, being first duly sworn upon his oath, makes this affidavit based on personal knowledge and deposes and states:

1. Affiant is the natural son of Harriet Ione Waite.

2. Affaint states that Harriet Ione Waite died intestate on April 17, 1989. She was survived by a spouse and three adult children. All heirs, excepting himself, have file an irrevocable Rununciation of Succession with the clerk of the Sheridan County, Nebraska, Probate Court. At the time of appointment of the personal representative there were no liabilities or debts against the estate and as of this date there are no liabilities or debts against the estate. The only asset in the estate of Harriet

Ione Waite is a chose in action involving a claim for negligence in the care and treatment of the Decedent and a claim for wrongful death.

3. Affiant is the duly appointed, qualified and acting personal representative of his mother, Harriet I. Waite.

4. Affiant was a participant in the June 28, 1991 telephone conference along with the Honorable Judge Robert Hippe and Attorney Rhonda R. Flower. The only issue discussed at that telephone conference was the defendants' Special Appearance. The issue of whether or not there was another suit on file against Regional West Medical Center containing substantially the same allegations was not discussed nor was any evidence adduced in regard to that issue and the issue of dismissal of the case was not discussed at that or any other conference.

5. After reviewing the records maintained by the Clerk of the District Court of Scotts Bluff County, Nebraska, affiant states that the Honorable Robert O. Hippe signed an Order Nunc Pro Tunc dated October 30, 1991. Said order was entered by the court SUA SPONTE without allowing the plaintiff a hearing in order to object to said order. Affiant states that the Clerk of said court did not, within thirty days, after said order was entered upon the court records, send me a post card or other notification of said order by United States Mail to him or his attorney.

6. Affiant states that no person at any time ever relied on him to prosecute this lawsuit on their behalf and this lawsuit is being prosecuted on behalf of himself and his benefit.

FURTHER AFFAINT SAYETH NOT.

GLENN R. WAITE

Subscribed and sworn to before me this 15th day of October 1993.

Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, Defendants.	*	NO. 38270 **REQUEST THAT JUDGE HIPPE RECUSE HIMSELF AND REQUEST FOR CHANGE OF JUDGE OR VENUE**

COMES NOW, Plaintiff, Glenn R. Waite, Personal Representative of Harriet I. Waite, deceased, sole heir at law under intestate succession, and the only real party in interest and requests that the honorable Robert O. Hippe recuse himself from any further judicial administration of this case. The honorable Robert O. Hippe invited and received an ex parte communication concerning this pending lawsuit.

According to the affidavit of James A. Snowden dated October 27, 1993, Judge Hippe invited an ex parte telephone conversation with Defendant Attorney James Snowden without including this Plaintiff. According to the affidavit of James Snowden, facts were discussed that the defendant was not a legal entity and that there was another case pending with substantially the same allegations. As a result of the ex parte telephone conversation, Judge Hippe signed an Order

Nunc Pro Tunc which dismissed the case. This plaintiff was not informed of and was not a participant in the ex parte telephone conversation and therefore this party was prejudiced by an inability to rebut facts communicated and as a result there was improper influence on the decision maker to dismiss this case. The dismissal of this case worked a substantial prejudice to this plaintiff's right to recover damages on behalf of the decedent's estate of which he is the sole beneficiary.

I have attached to this request a copy of the affidavit of James A. Snowden. I have also attached my own affidavit stating that the ex parte communication was done without my knowledge.

MEMORANDIUM BRIEF

JUDGE WHO INITIATES OR INVITES AND RECEIVES AN EX PARTE COMMUNICATION CONCERNING PENDING OR IMPENDING PROCEEDING MUST RECUSE HIMSELF OR HERSELF FROM PROCEEDINGS WHEN LITIGANT REQUESTS SUCH RECUSAL, IRRESPECTIVE OF WHETHER LITIGANT SHOWS PREJUDICE

In Nebraska, an ex parte communication is improper judicial conduct. Nebraska law provides that when a litigant requests recusal, the judge must recuse himself irrespective of whether litigant shows prejudice. See State v. Barker, 227 Neb. 842, 420 N.W.2d 695 (1988).

ONE CANNOT KNOW OF IMPROPER JUDICIAL CONDUCT, GAMBLE ON A FAVORABLE RESULT BY REMAINING SILENT AS TO THAT CONDUCT, AND THEN COMPLAIN THAT HE OR SHE GUESSED WRONG AND DOES NOT LIKE THE OUTCOME

When a litigant becomes aware of improper judicial conduct such as

receiving into evidence details of the ex parte communication, he cannot remain silent as to that activity and then later complain that he did not like the outcome. See State v. Jensen, 232 Neb. 403, 440 N.W.2d 686 (1989). On October 29, 1993, an affidavit of James A. Snowden was received into evidence in this case which gave details of the ex parte communication. See attached copy.

CONCLUSION:

Nebraska law requires that Judge Hippe recuse himself from this case irrespective of whether litigant shows prejudice.

Plaintiff requests that the clerk of the court schedule another hearing in regard to the pending motions since they were taken under advisement on October 29, 1993. In case there is no Judge in this venue that can render an impartial adjudication in this case, I request that the case be sent to another venue where there can be an impartial adjudication.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he mailed a true and corect copy of the foregoing REQUEST FOR RECUSAL to James A. Snowden, 1000 NBC Center, Lincoln, NE 68508; and Robert P. Chaloupka, 1904 First Ave., P.O. Box 1204, Scottsbluff, NE 69361; by regular U.S. Mail this the 2nd day of November 1993.

Glenn R. Waite

IN THE DISTRICT COURT FOR SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, Defendant.	* * * * * *	No. 38270 **AFFIDAVIT OF GLENN R. WAITE**

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, being first duly sworn upon his oath, makes this affidavit based on personal knowledge and deposes and states:

1. Affiant is the natural son of Harriet Ione Waite and the sole heir at law under intestate succession in the matter of the estate of Harriet I. Waite, deceased.

2. Affiant is the duly appointed, qualified and acting Personal representative of his mother, Harriet I. Waite.

3. Affiant states that no person at any time ever relied on him to prosecute this lawsuit on their behalf and this lawsuit is being prosecuted on behalf of himself and his benefit.

4. Affiant was a participant in the June 28, 1991 telephone conference along with the honorable Judge Robert Hippe and Attorney Rhonda R. Flower. The only issue discussed at that telephone conference was the defendants' Special Appearance. The issue of whether or not there was another suit on file against Regional West Medical Center containing substantially the same allegations was not

discussed nor was any evidence adduced in regard to that issue and the issue of dismissal of the case was not discussed at that or any other conference of which he was a participant.

5. Affiant states that prior to or at the time of the telephone conference on October 28, 1991, he was not made aware of the telephone conference between Attorney James A. Snowden and the honorable Robert O. Hippe and that he was not a participant in that telephone conference.

FURTHER AFFAINT SAYETH NOT.

_____
GLENN R. WAITE

Subscribed and sworn to before me this 2d day of November 1993.

_____
Notary Public

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	) No. 38270) NOTICE OF IRREGULARILY ISSUED SUMMONS AND SPECIAL APPEARANCE IN THE ALTERNATIVE

Comes now Nancy Adams, R.N. appearing specially and not generally, for the purpose of giving notice to the court of an irregular and improperly issued Summons and in the alternative objecting to the jurisdiction of the Court over her for the following reasons:

1. The Clerk apparently issued a Summons in a dismissed case, irregularily and without authority to do so;

2. The Summons is not directed to Nancy Adams or any legal entity;

3. No valid Summons has been issued or served upon her;

4. That the purported Summons is invalid and void;

5. That the purported service of Summons is invalid and void;

6. That the Summons was not issued, served or returned according to law and is completely insufficient as a writ of process of this Court; and

7. The Summons was not issued within six months of the filing of the Petition.

8. All filings by the plaintiff are void and a nullity since the plaintiff is engaged in the unauthorized practice of law.

Dated this 6 th day of October 1994.
NANCY ADAMS
By: KNUDSEN, BERKHEIMER,
RICHARDSON & ENDACOTT
1000 NBC CENTER
Lincoln, Nebraska
(402) 475-7011
By:

James A. Snowden

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, and NURSING SERVICE, Defendants.	)))))))	No. 38270 PETITION FOR HEARING

COMES NOW, Glenn R Waite, individually, pursuant to the procedural due process requirements of the 14th amendment to the U.S. Constitution and respectively requests this Court to provide him with a hearing in this case on the Defendant's motion to Strike Pleadings and to Dismiss filed July 19, 1991.

This Court has not provided petitioner with this hearing in this case and in evidence threof, petitioner attaches a true copy of the Clerk's Certification dated 9/20/94.

This Court has jurisdiction of this petition pursuant to Article VI section two of the U.S. Constitution which states:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the

Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary no withstanding."

This Petitioner claims his rights under Article IV, section 1 of the U.S. Constitution which states:

"Section 1. Full faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

This Petitioner also claims his rights under Article IV, section 2 of the U.S. Constitution which states:

"Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Petitioner further claims his rights under Amendments one and fourteen to the U.S. Constitution which state:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or probiding the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." and

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherin they reside. No State shall make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

WHEREFORE, Petitioner hereby respectively requests this Court to provide him with a hearing within thirty days of the filing of this petition, otherwise petitioner will consider that this Court intends to deny him of his federal rights in violation of the U.S. Constitution.

Glenn R. Waite
Plaintiff
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing PETITION to be served upon James A. Snowden, 1000 NBC Center, Lincoln, NE 68508 by certified U.S. Mail this the 6th of November 1995.

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. PAUL D. EMPSON, ROBERT O. HIPPE, ALFRED J. KORTUM, REGIONAL WEST MEDICAL CENTER, NANCY ADAMS, SCOTTSBLUFF INTERNAL MEDICINE GROUP, and W. SCOTT CARPENTER, Defendants.	)	NO. 44590
	)	**MOTION TO JOIN INDISPENSABLE PARTIES OR, IN THE ALTERNATIVE, MOTION TO CHANGE ORDER OF DISMISSAL TO BE WITHOUT PREJUDICE**

Pursuant to Neb. Rev. Stat. sections 25-852 and 25-21,159 (Reissue 1995), Plaintiff hereby moves the Court to enter an order permitting him to join certain parties if the court determines they are indispensable parties such as the Judges in their official capacities, Ann Rosenberry, Clerk of District Court, in her official capacity, and the Scotts Bluff County Attorney in his official capacity if it deems them to be indispensable parties to the controversy or to the motion to vacate order dated April 30, 1997 and filed May 2, 1997. In the alternative, Plaintiff moves the Court to change its Order of Dismissal to be without prejudice since there is absence of necessary parties; Neb. Rev. Stat. section 25-323 (Reissue 1995); Marsh v. Marsh, 173 Neb. 282, 113 N.W.2d 323.

In the second amended petition, plaintiff has alleged that Paul D. Empson is a District Judge of the Twelfth Judicial District and issued an order which affects his individual rights in cases 38270 and 38279. Plaintiff has

alleged that Judge Hippe is a District Judge of the Twelfth Judicial District and issued orders which affect his individual rights. Plaintiff has alleged that Judge Kortum is a retired District Judge of the Twelfth Judicial District which entered orders which affected his individual rights. If this plaintiff files, pursuant to the 14th Amendment to the U.S. Constitution, a motion to vacate all orders signed by Judge Hippe in cases 38270 and 38279, Ann Rosenberry, Clerk of Court, will be required to notify the county attorney in compliance with the Orders of Judge Empson. As such, Ann Rosenberry in her official capacity is an indispensable party to this action and the Scotts Bluff County Attorney in his official capacity is an indispensable party to this action. Any declaration by this Court that Neb. Rev. Stat. section 24-318 (Reissue 1995) and section 7-101 (Reissue 1991) are unconstitutional under the U.S. Constitution would affect the interests of the Judges, Clerk, and County Attorney in their official Capacities.

Pursuant to Neb. Rev. Stat. section 25-852 (Reissue 1995), this Court may, either before or after judgment, in furtherance of justice, and upon such terms as may be proper, permit a party upon motion to amend a pleading, process, or proceeding by adding or striking the name of any party.

WHEREFORE, Plaintiff moves this Court, in its discretion, to permit him to join the indispensable parties or, in the alternative, to change its Order of Dismissal to be without prejudice.

Glenn R. Waite,
Plaintiff,
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing MOTION to be served upon Charles E. Lowe, Attorneys for Defendants, Assistant Attorney General, 2115 State Capitol Bldg., Lincoln, NE 68509-8920; James A. Snwoden, 830 NBC Center, Lincoln, NE 68508; and Mark E. Novotny, 10306 Regency Parkway Dr., Omaha, NE 68114 by first class U.S. Mail this the 2nd day of July 1997.

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	*	NO. 38279
vs.	*	**AMENDED MOTION**
W. SCOTT CARPENTER, M.D., and SCOTTSBLUFF INTERNAL MEDICINE GROUP,	*	**OR PETITION TO VACATE JUDGEMENT**
Defendants.	*	**OR ORDER**

COMES NOW, Plaintiff, Glenn R. Waite, individually, as sole distributee and sole legal beneficiary of the estate of Harriet I. Waite and amends his previous motion or petition filed on or about March 10, 1994 and moves this court to vacate its order to overrule Plaintiff's motion for new trial on March 1, 1994, vacate its memorandum decision dated December 9, 1993, and grant him a new hearing or trial

pursuant to section 25-1142 of the Neb. Rev. Stat. (Reissue 1989) for the following reasons:

(1) Irregularity in the proceedings and abuse of discretion by the court in which this party was prevented from having a fair trial.

(2) Misconduct by prevailing party or fraud practiced by the successful party in obtaining the judgment or order.

(3) That the decision of the court is not sustained by sufficient evidence, or is contrary to law or error of law occurring at trial.

Plaintiff states that this District Court has authority to set aside a judgment, decree, or order during the term at which is was rendered, if satisfied that it had been obtained by fraud or if it believes that its former conclusion was erroneous.

Plaintiff states that the defendants, W. Scott Carpenter, M.D. and Scottsbluff Internal Medicine Group practiced fraud upon this court by filing false testimony in the form of sworn affidavits on October 29, 1993 and on February 1, 1994 relied on the false testimony to oppose the Plaintiff's motion for new trial.

Plaintiff states that he filed a motion to vacate judgment of dismissal on or about October 18, 1993 in which he sought to vacate judgment of dismissal at subsequent term based upon irregularity in the proceedings in that this plaintiff did not receive the ten day notice required by Nebraska law under section 25-1332 of the Neb. Rev. Stat. (Reissue 1989). The defendants, W. Scott Carpenter, M.D. and Scottsbluff Internal Medicine Group, through their attorneys, filed in court on October 29, 1993 the affidavit of Mark E.

Novotny dated October 28, 1993. This affidavit contained false testimony in regard to the issue of notice.

Plaintiff states that he exercised due diligence at the trial on October 29, 1993 in that he objected to admitting the false testimony and admitted counter-testimony. His failure to secure a just decision was not attributable to his own negligence.

Plaintiff states that the decisions of this court on March 1, 1994 work a substantial injury to his rights as the sole distributee, sole beneficiary, and sole heir under intestate succession in the matter of the estate of Harriet I. Waite.

Plaintiff states that there is a valid defense to the action in which the judgments or orders were rendered and that the plaintiff has a valid cause of action.

Plaintiff attaches to this motion the Affidavit of Mark E. Novotny dated October 28, 1993 and the affidavit of Glenn R. Waite dated January 18, 1994.

Plaintiff requests a hearing to be held in regard to this motion or petition to vacate judgment or order.

WHEREFORE, Plaintiff prays that this court will vacate its memorandum decision dated December 9, 1993 and its order dated March 1, 1994 due to fraud practiced upon the court by the successful party. Plaintiff prays that this court will grant him a hearing in order that he might prove his grounds to vacate the judgment or order of this court.

_____

Glenn R. Waite,
Plaintiff,
1202 West 28th St.
Cheyenne, WY 82001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing PETITION OR MOTION TO VACATE to be served by regular U. S. Mail, postage prepaid, to Mark E. Novotny, Kennedy Holland, DeLacy & Svoboda, 10306 Regency Parkway Dr., Omaha, NE 68114, on this the 18th day of March 1994.

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	*	NO. 38279
vs.	*	**AFFIDAVIT OF**
W. SCOTT CARPENTER, M.D., and SCOTTSBLUFF INTERNAL MEDICINE GROUP,	*	**GLENN R. WAITE**
Defendants.	*	

Glenn R. Waite, being first duly sworn upon his oath, makes this affidavit based on personal knowledge and deposes and states:

1. Affiant is the plaintiff is this case and sole beneficiary of the estate of Harriet I. Waite.

2. Affiant states that Mark E. Novotny or his law firm, Kennedy, Holland, DeLacy& Svoboda, was a witness and filed sworn affidavits entitled " Affidavit of Mark E. Novotny" in the above captioned case during the time he was acting in the role of defense attorney on behalf of his clients, W. Scott Carpenter, M.D., and Scottsbluff Internal Medicine Group.

3. Affiant states that matters within the sworn affidavits relate to matters which are contested between the parties to this lawsuit, evidence has been offered in

opposition to the sworn testimony in the form of affidavits does not relate to the nature or value of legal services.

4. Affiant was attending a medical conference in Anaheim, California on August 9, 1991 and was not a participant in the telephone conference on August 9, 1991 relating to case 38269 filed in the Distict Court of Scotts Bluff County, Nebraska.

FURTHER AFFIANT SAYETH NOT.

Glenn R. Waite

Subscribed and sworn to before me this the 18th day of January 1994.

Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff, vs. W. SCOTT CARPENTER, M.D., and SCOTTSBLUFF INTERNAL MEDICINE GROUP, Defendants.	NO. 38279 AFFIDAVIT OF MARK E. NOVOTNY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

Mark E. Novotny. being first duly sworn on oath, makes this Affidavit upon his personal knowledge and in opposition to Plaintiff's Motion to Vacate Summary Judgment of Dismissal and Motion to Strike Papers from Files.

1. Affiant is one of the attorneys for the Defendants in the above-captioned action.

2. Attached hereto, marked Exhibit A., and incorporated herein as if set forth in full, is a true and accurate copy of the Bill of Exceptions in this matter received from the Nebraska Court of Appeals.

3. Attached hereto, marked Exhibit B, and inorporated herein as if set forth in full, is a true and accurate copy of the August 16, 1991 correspondence to the Honorable Robert O. Hippe, Scotts Bluff County District Court, from Mark E. Novotny showing a copy to Plaintiff Glenn R. Waite. Affiant further states that the correspondence was sent by United States mail, postage prepaid, to Plaintiff Glenn R. Waite at his address filed in the pleadings in this matter.

4. Affiant, on behalf of Defendants, received on September 7, 1991, a copy of the Order of September 5, 1991 of this Court sustaining Defendants' Motion for Summary Judgment.

5. Attached hereto and marked Exhibit C is a true and accurate copy of the Journal Entry received by affiant regarding the August 9, 1991 telephonic hearing memorialized therein. Affiant further states that Exhibit C accurately reflects the Order of the Court of that day and states that Plaintiff was a party participant to said telephonic hearing during which time the Court issued said Order.

FURTHER AFFIANT SAYETH NOT.

Mark E. Novotny

Subscribed and sworn to before me this 28th day of October, 1993.

Notary Public

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	)	NO. 38269
vs.	)	JOURNAL
W. SCOTT CARPENTER, M.D., REGIONAL WEST MEDICAL CENTER, Defendants.	)	ENTRY

Now on this 9th day of August, 1991, by telephonic hearing, with Defendant W. Scott Carpenter appearing by Mark Novotny and defendant Regional West Medical Center appearing by James Snowden, this matter came on for hearing.

Case is set in open court for hearing of all motions September 3, 1991 at 10:00 a.m. along with all other related pending cases.

By the Court,

_____

Robert O. Hippe

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICES, Defendants.	))))))))	Case No. 38270 MEMORANDUM DECISION

On April 8, 1991, the plaintiff filed five lawsuits in this court. On April 11, 1991, a sixth suit was filed. All of those cases were filed by Glenn R. Waite, Personal Representative of Harriet I. Waite, his mother, Deceased, as plaintiff. All of the cases sought to recover damages as next of kin, and all of the cases complained of medical treatment furnished to Harriet I. Waite at some time between 1986 and April 17, 1989, when Harriet I. Waite, died.

In all the cases, various motions were filed by defendants and the plaintiff made amendments to the original complaint for damages. The cases were assigned different cases numbers, were assigned to different judges, and referred to different incidents of medical treatment, with some duplication between the cases.

The first case was assigned number 38267, and was assigned to Judge Kortum. The person summoned in that case was W. Scott Carpenter, M.D. who is a doctor practicing internal medicine with the group Scottsbluff Internal Medicine Group, and included Regional West Medical Center, the owner and operator of a local acute care hospital.

The second case was number 38268, and it was also assigned to Judge Kortum. Persons sued in that case were W. Scott Carpenter, M.D., Armando J. Mangana, M.D., another member of the internal medicine group, William M. Packard, M.D., a third member of the internal medicine group, Regional West Medical Center, and Terry Himes, D.O., a local neurologist who practices individually.

The third case was number 38269. This case was assigned to Judge Hippe. Persons sued were W. Scott Carpenter, M.D., and Regional West Medical Center.

The fourth case filed was number 38270, this case. It was assigned to Judge Hippe, and the defendant sued was Regional West Medical Center Nursing Service.

The fifth case filed was number 38271 and it was assigned to Judge Kortum. The persons sued were Regional West Medical Center, W. Scott Carpenter, M.D., Terry Himes, D.O., Janet L. Haick, R.N., apparently an employee of the hospital, Judy Bowlin, L.P.N., another employee of the hospital, and Donna Rusen, R.N., another employee of the hospital. Also included in this case was Larry O'Holleran, M.D., a local surgeon.

The sixth and last case filed 3 days later was number 38279, and was assigned to Judge Hippe. the defendants in that last case were W. Scott Carpenter, M.D., and Scottsbluff Internal Medicine Group.

All of the cases had various amendments to them and included complaints about actions of people other than the summoned defendants. However, none of the cases had any additional defendants summoned other than those that are listed above.

In Case No. 38270, which had Regional

West Medical Center Nursing Service as a defendant, on May 17, 1991, the Court rendered an order allowing the withdrawal of a defense motion for nonresident cost bond and a special appearance in order for the defense to evaluate an amended petition which had been filed. Then a special appearance was filed on June 11, 1991. At a hearing on June 28, 1991, that special appearance was sustained on the basis of a defense affidavit that Regional West Medical Center Nursing Service is not a legal entity, but is a department within the Regional West Medical Center.

On July 19, 1991, the defense filed a motion to strike pleadings and to dismiss in all cases. The defense claim in these motions was that the plaintiff was practicing law without a license and should be dismissed from the cases on account of that.

On August 8, 1991, all cases had a defense motion for summary judgment filed, and served, with the exception of Case No. 38270; which was the case that had the special appearance sustained on the basis that no defendant had been sued. Counsel Mark Novotny and James Snowden, representing various defendants phoned and requested that the defense motions be set for hearing. An order was made by both judges in some of the cases setting "all motions....along with all other related pending cases" for hearing on September 3, 1991. That order was dated August 9, 1991.

On September 3, 1991, a consolidated hearing was held in all of the cases except the one where the special appearance had been sustained, Case No. 38270. The plaintiff appeared with counsel Alexander Davison, evidence was adduced by both parties in all five cases, Nos 38267,

38268, 38269, 38271, and 38279, and the defense motions for summary judgment and to strike pleadings and dismiss were submitted.

On September 5, 1991, there was an order made for summary judgment of dismissal against the plaintiff's case in all cases except number 38270. In three of those cases, Nos. 38267, 38268, and 38271, the dismissal was appealed to the Nebraska Court of Appeals, and the judgment was affirmed by that court on October 27, 1992. The opinion of the Court of Appeals may be found at 1 N.C.A. 2014. The reason for affirming the judgment of dismissal was that the record showed that the plaintiff was engaging in the unauthorized practice of law and that dismissal of the plaintiff's case was an appropriate remedy for that violation.

In Case no. 38270, defense counsel Snowden noticed nothing had been done since June 28, 1991, when a special appearance had been sustained. On October 28, 1991, (after 3 cases had been appealed and the other 2 had become final), he called the clerk to find out why. He was transferred to Judge Hippe and was told to prepare an order nunc pro tunc to include a dismissal of that case. Nothing had transpired in that case since the June ruling that the defendant sued was not a legal entity. That was done, signed, and filed on October 30, 1991, and sent to the plaintiff and his attorney who had taken the appeals.

Now, in all cases except 38269, the plaintiff has filed pro se motions to set aside and vacate the dismissals. In amended petition, the plaintiff now says he is Glenn R. Waite. Amended petitions in each case seem to involve the same matters

that were decided in 1991, except now the plaintiff says all heirs of Harriet I. Waite have renounced any inheritance interest, that there are no creditors in the estate, that there are no assets other than these causes of action, and that Glenn R. Waite is the only person interested in the estate or these cases. The renunciations are dated in September and October, 1993.

If the Court allows the plaintiff to reopen these cases and pursue his claim, the Court may be countenancing the unauthorized practice of law that was condemned by the opinion of the Court of Appeals and was ruled improper by the summary judgments of dismissal done by this Court. On the other hand, if the Court allows the plaintiff to be different person and sue individually in these cases by reopening them, the Court will allow a stranger to the suit into a case which has rendered a final judgment. In either event, the plaintiff has no case. If he wishes to pursue a case individually as himself, such a case will have to be properly filed and litigated. If the plaintiff is still the plaintiff who lost this case, he can proceed no further because to allow it would further condone his unauthorized practice of law. in either event, the efforts to reopen must fail.

The cases were dismissed on September 5, 1991, because of what the plaintiff had done befoe that time, to.wit. engaged in the unauthorized pratice of law. Whatever has changed since September 5, 1991, whether the interests in the estate have changed or not, makes no difference. The plaintiff did have counsel at the motion for summary judgment hearings and for the

appeals. Thus, he was not engaging in the unauthorized practice of law at those times. However, the cases were dismissed because of what he had already done. If the cases are enlivened now, for whatever reason, the unauthorized practice of law would be of no consequence, and the plaintiff would get through the back door what he couldn't through the front door.

The Court of Appeals discussed the evils that are the reason for the rule against unauthorized practice of law in Nebraska. To allow the plaintiff to continue to file motions, create litigation, vex litigants, etc., will compound those evils.

There is an additional consideration in this case. The reason for sustaining the special appearance on June 28, 1993, was given in the affidavit of Alyce Maupin that was relied upon for the decision - the defendant was a department of a corporation. The department of a corporation obviously does not have capacity to sue or be sued. It is not a natural or artificial person recognized by law. Thus, this case had no legal defendant and still doesn't. In realty, it is not a case, and never will be because cases or controversies must have a claimant and an adverse party. That's why no hearings were set in this case after June 28, 1993, even though various papers were filed.

There is a disagreement whether a decision sustaining a special appearance such as this is a final order, or whether the decision must be accompanied by a dismissal. 4 Am.Jur.2nd "Appeal and Error" 81 says that the courts are not unaminous on the point. It generally depends on whether the defect can be corrected, such

as amending the summons or an affidavit in support of service by publication. In this case, it makes no difference because the dismissal was done on October 30, 1991. The court agrees that the October 30, 1991, order's reference to other cases pending is surplusage. If a dismissal had been included in the journal dated June 28, 1991, there would have been no doubt, but the fact that it was done later makes the point moot because the dismissal is final - whether it is viewed as occurring on June 28 or October 30.

Therefore, there is substantial doubt whether the court can make any rulings in this case or not. Any way you look at it, there is no defendant in the case. Without a real case, with real parties, substantial jurisdictional questions exist about whether any judge could make vaild judgments and orders in this case at any time after June 28, 1991.

IT IS THEREFORE ADJUDGED that this case is final, that the plaintiff may not proceed in this case or profit from it because to allow that would further condone his unauthorized practice of law.

IT IS THEREFORE ORDERED that the motions requesting further orders are all denied.

Entered and rendered this 9th day of December, 1993.

By the Court,

_____

Robert O. Hippe
District Judge

IN THE DISTRICT COURT OF
SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff,	)	NO. 38270
vs.	)	AMENDED
REGIONAL WEST MEDICAL CENTER,	)	COMPLAINT
NURSING SERVICES, Defendants.	)	JURY TRIAL REQUESTED

NOW COMES, Plaintiff, Glenn R. Waite, to amend his complaint and alleges a cause of action as follows:

1. Plaintiff, Glenn R. Waite, is the personal representative of the estate of Harriet I. Waite and resides at 1820 Drew Avenue, Mountain View, California.

2. Harriet I. Waite, deceased, shall be referred to as "subject" herein. Subject resided at Hay Springs, Nebraska, County of Sheridan, State of Nebraska.

3. Defendant, Regional West Medical Center, Nursing Services, is an acute care general hospital and is licensed under the laws of the State of Nebraska and is accredited by the Joint Commission on Accreditation of Health Care Organizations. Their offices are at 4009 Avenue B., Scottsbluff, Nebraska.

4. On April 14, 1989, Defendant, Regional West Medical Center, Nursing Services, Jane Doe, REAL NAME UNKNOWN, (medication record signed by Nancy Adams and Connie Mount) administered a continuous morphine infusion to subject knowing the subject had refused the medication. This represented assault and battery.

5. The Defendant, Regional West

Medical Center, failed to supervise the quality of care provided to subject representing corporate liability.

6. Defendant, Regional West Medical Center Nursing Services, acted without concern for the subject's safety and against the Nursing profession's code of ethics.

WHEREFORE, Plaintiff prays for judgment against the defendants as follows:

1. General damages for pain and suffering and mental anguish to be determined by this court.

2. Special damages for malicious acts. Demand is for $200, 000 dollars.

3. Costs and such other relief as this court may deem proper. Interest is demanded and is to be calculated from April 14, 1989 and onward until judgment by this court.

4. Demand is made for a jury to hear this case.

Executed on May 14, 1991.

_____

Glenn R. Waite,
plaintiff

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Plaintiff,	*	No. 38270
vs.	*	**MOTION TO ANNUL**
REGIONAL WEST MEDICAL CENTER,	*	**DEFENDANT'S MOTION TO**
Defendant.	*	**DISMISS**

COMES NOW, Plaintiff, Glenn R. Waite, and moves this court to vacate the motion to dismiss filed by Defendant, Regional West Medical Center, on July 19, 1991.. There is no pretrial pleading known as a motion to dismiss. See Smick vs. Langvardt, et. al., 216 Neb. 778 (1984). Therefore, Defendant's motion must be held as a nullity.

This motion to dismiss if sustained by the court could work a substantial injury to the rights of the plaintiff in his ability to recover damages as the sole heir at law of the estate of his deceased mother, Harriet I. Waite, under intestate succession.

WHEREFORE, Plaintiff, so moves this court to vacate Defendant's motion to dismiss and hold it as a nullity.

Glenn R. Waite,
Plaintiff,
1202 W. 28th St. #2
Cheyenne, WY 82001
307-634-8712

IN THE DISTRICT COURT FOR SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE	*	NO. 38270
Plaintiff,	*	**AMENDED PETITION**
vs.	*	**SURVIVAL ACTION**
REGIONAL WEST	*	
MEDICAL CENTER,	*	
Defendant.	*	

COMES NOW, Plaintiff, Glenn R. Waite, personal representative of his deceased mother, Harriet I. Waite, and sole heir at law under intestate succession, to amend his petition and alleges a cause of action against the defendant, Regional West Medical Center, as follows:

1. Plaintiff, Glenn R. Waite, is the duly appointed, qualified and acting Personal Representative of his deceased mother, Harriet I. Waite, and is the sole heir at law under intestate succession. He is the only real party in interest and represents himself in this action. Glenn R. Waite resides at 1202 West 28th Street, Cheyenne, Wyoming 82001.

2. Harriet Ione Waite died intestate on April 17, 1989 due mainly to large doses of morphine. At the time of death Harriet I. Waite was a resident of Hay Springs, Nebraska, County of Sheridan. Her death was not instantaneous. She was survived by a spouse, and three natural adult children. All heirs, excepting Glenn R. Waite, have filed an irrevocable Renunciation of Succession pursuant to section 30-2352 of the Nebraska Revised Statues with the clerk of the Sheridan County Probate court. Glenn R. Waite is the sole heir under intestate succession. Plaintiff has attached true copies of the irrevocable Renunciation of Succession

documents filed with the clerk of the county court.

3. There were no liabilities or debts against the estate of the intestate at the time of appointment of the personal representative and there are no liabilities or debts against the intestate as of this date.

4. The District Court of Scotts Bluff County is the proper court in that the controversy involves relief for a sum greater than $10,000. Venue is proper in that the cause of action occurred in Scotts Bluff County and the Defendant, Regional West Medical Center, provides goods and services in Scotts Bluff County, Nebraska.

5. This cause of action is one which involves the right of Harriet I. Waite for the loss occasioned to her by the defendants prior to her death. Plaintiff brings this action for the benefit of the decedent's estate, under the provisions of sections 25-1410 and 30-2464(c) of the Neb. Rev. Stat. (Reissue 1989).

6. Defendant, Regional West Medical Center, is an acute care general hospital and is licensed under the laws of the State of Nebraska and was accredited by the Joint Commission on Accreditation of Health Care Organizations at the time said action occurred. Regional West Medical Center is a major teaching affiliate of the University of Nebraska and receives funds from the State of Nebraska. Their offices are at 4021 Avenue B., Scottsbluff, Nebraska.

7. Nancy Adams, R.N. was employed by Regional West Medical Center in the capacity of Registered Nurse at all times in reference to this cause of action. Nancy Adams, R.N. during the course of her

employment at Regional West Medical Center attended to the care of Harriet I. Waite.

8. Connie Mount, R.N. was employed by Regional West Medical Center in the capacity of Registered Nurse at all times in reference to this cause of action. Connie Mount, R. N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

9. Marlene H. McKeown, R.N. was employed by Regional West Medical Center in the capacity of Registered Nurse at all times in reference to this cause of action. Marlene H. McKeown, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

10. Jama Houck, R. N. was employed by Regional West Medical Center in the capacity of Registered Nurse at all times in reference to this cause of action. Jama Houck, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

11. Donna Rusen, R.N. was employed by Regional West Medical Center in the capacity of Registered Nurse at all times in reference to this cause of action. Donna Rusen, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

12. Judy Bowlin, L.P.N. was employed by Regional West Medical Center in the capacity of licensed practical nurse at all times in reference to this cause of action. Judy Bowlin, L.P.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

13. Linda Moreno, R.N. was employed by Regional West Medical Center in the

capacity of Registered nurse at all times in reference to this cause of action. Linda Moreno, R.N. during the course of her employment at Regional West Medical Center attended to the care of Harriet I. Waite.

14. Glenn R. Waite, natural son of Harriet I. Waite acted as her agent on several admissions to Regional West Medical Center. On April 2, 1989 Harriet I. Waite was admitted to Regional West Medical Center under the care of William Packard, M.D. On the day of admission, Glenn R. Waite signed the admission contract on her behalf since she had recently become paralyzed and could not write.

15. Harriet Ione Waite was known to be of sound mind and prior to death had capacity to communicate and make her own medical decisions.

16. Harriet I. Waite suffered from a condition known as recurrent aspiration pneumonia.

17. Nancy Adams, R. N., as employee of Regional West Medical Center, on April 14, 1989 was observed to administer a continuous morphine infusion to Harriet I. Waite knowing that Harriet I. Waite had refused the morphine. The morphine was administered in such a manner where Nancy Adams, R.N. and Connie Mount, R.N. and other employees of Regional West Medical Center controlled the rate of infusion rather than Harriet I. Waite. Nancy Adams, R.N. in the course of her employment failed to exercise her duties in a skillful proper manner. Nancy Adams, R. N. should have recognized that the morphine was contraindicated in that it would make Harriet I. Waite's condition worse and that Harriet I. Waite had a

right to refuse the medication. A reasonably prudent nurse in the same situation would have not administered the medication and would have reported said refusal to her superior and would have informed the patient's physician. As a result of said negligence, Harriet I. Waite suffered damages causing less alertness and increased sedation, increased difficulty in clearing her airway and increased difficulty in breathing from April 14 to April 17, 1989. At the time of the tortious act, Nancy Adams, R.N. was acting within the scope of her employment duties and her tortious act was therefore imputable to the Defendant, Regional West Medical Center, under the doctrine of respondeat superior.

18. On April 15, 1989, during the course of her employment duties in attending to the care of Harriet I. Waite at Regional West Medical Center, Marlene McKeown, R.N. withdrew nutrition and hydration from Harriet I. Waite without consent from Harriet I. Waite and failed to provide other means of hydration and nutrition. Harriet I. Waite needed some form of nurtition and hydration and without this she started a process of dehydration and worsening malnutrition. Marlene McKeown, R.N., in the course of her employment, failed to exercise her duties in a skillful proper manner. As a result of said negligence, Harriet I. Waite suffered damages in the form of dehydration and worsening malnutrition. The dehydration caused morphine to remain in her body for longer periods of time thus causing increased toxicity and thus less alertness with increased sedation, increased difficulty in clearing her airway and increased difficulty in

breathing. The worsening malnutrition caused increased weakness with less ability to fight for her life such as clearing her airway and trying to breathe. At the time of the tortious act, Marlene McKeown, R.N. was acting within the scope of her employment duties and therefore her tortious act was imputable to the Defendant, Regional West Medical Center, under the doctrine of respondeat superior.

19. During the period of April 14, 1989 to April 17, 1989, Jama Houck, R.N., Donna Rusen, R.N., and Judy Bowlin, L.P.N. were employed by Regional West Medical Center and during the course of their employment they attended to the care of Harriet I. Waite. During their attendance to the care of Harriet I. Waite, they observed signs of morphine overdoseage such as decreased alertness and increased sedation, hypotension, increased inability to clear her airway, and periods of apnea. Having observed signs of morphine overdoseage, Jama Houck, R. N., Donna Rusen, R.N. and Judy Bowlin, L.P.N. failed to take appropriate steps to treat the morphine overdoseage and as a result said negligence, Harriet I. Waite suffered damages causing increased difficulty in clearing her airway and increased difficulty in the process of breathing. At the times of the tortious acts, Jama Houck, R.N., Donna Rusen, R.N., and Judy Bowlin, L.P.N. were acting within the scope of their employment duties and their tortious acts were therefore imputable to the Defendant, Regional West Medical Center, under the doctrine of respondeat superior.

20. On April 17, 1989 at approximately 2:00 pm, Donna Rusen, R.N. observed that Dr. W. Scott Carpenter

mechanically increased the amount of morphine being infused into Harriet I. Waite at the same time Harriet I. Waite was observed to have signs of morphine overdoseage. Linda Moreno, R.N. was notified. Donna Rusen, R.N. and Linda Moreno, R.N. failed to perform their nursing duties in a skillful diligent manner in that they failed to protect Harriet I. Waite from harm caused by Dr. W. Scott Carpenter. As a result of their lack of skill and diligence in performing their duties, Harriet I. Waite became blue gasping for air and turned blue. Donna Rusen, R.N. and Linda Moreno., R.N. failed to perform cardio-pulmonary resuscitation on Harriet I. Waite in order to treat the morphine overdoseage inflicted onto Harriet I. Waite against her expressed wishes. At the time of the tortious act, Donna Rusen, R.N. and Linda Moreno, R.N. were acting within the scope of their employment duties and their tortious acts were therefore imputable to the Defendant, Regional West Medical Center under the doctrine of respondeat superior.

21. At all times pertinent to this cause of action, Defendant, Regional West Medical Center, had a duty to Harriet I. Waite. Regional West Medical Center failed to enforce its policies and procedures in regard to the administration of medication, withdrawal of food and fluids, and cardiopulmonary resuscitation. Defendant, Regional West Medical Center, is accredited by the Joint Commission on accreditation of Health Care Institutions and failed to adhere to the standard of care of such accredited health care institutions. Such negligence resulted in tortious injury to Harriet I. Waite in the form of intense pain and suffering and

loss of dignity. The defendant demonstrated gross inattention and wanton indifference to the safety of the subject.

22. Harriet I. Waite died on April 17, 1989 of injuries caused proximately mainly by excessive doses of morphine. Her death was not instantaneous and from April 14, 1989 to April 17, 1989 she had increased pain and suffering and related damages up to the moment of death. Such injuries preserve for the estate a cause of action distinct from a wrongful death claim. Had she not died she would have been entitled to maintain this cause of action.

23. At the time of her death, decedent had a life expectancy of 14 years and was 71 years old when she died.

24. Plaintiff has attached to this Petition the affidavit of Colleen E. Nash.

WHEREFORE, Plaintiff, Glenn R. Waite, prays for a judgment against the defendants to be awarded to the estate of Harriet I. Waite of which he is the sole heir at law and sole beneficiary under intestate succession:

1. General compensatory damages for pain and suffering, mental anguish, and loss of dignity suffered by Harriet I. Waite to be determined by this court.

2. Special damages for malicious acts and bad faith. Demand is for $500,000.00.

3. Costs and such other relief as this court may deem proper such as court costs and attorney fees.

4. Interest is demanded and is to be calculated from April 14, 1989 and onward until judgment by this court.

5. Demand is made for a jury to hear this cause of action.

Executed on Oct. 15, 1993

Glenn R. Waite,
Plaintiff,
1202 West 28th St.
Cheyenne, WY 82001
307-634-8712

VERIFICATION:

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Glenn R. Waite, being first duly sworn under oath, deposes that he is the duly appointed, qualified, and acting Personal Representative of his deceased mother, Harriet I. Waite, and is sole heir at law of the estate of Harriet I. Waite under intestate succession and is the Plaintiff in this action and represents the interests of no other person other than himself and that he has read the contents of this petition and the facts therein are true and correct. He is a physician and has personally reviewed the medical records of Harriet I. Waite.

Glenn R. Waite

Subscribed and sworn to before me this 15th day of October 1993.

Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Amended Complaint was served upon Robert P. Chaloupka, 1904 First Avenue, P.O. Box 1204, Scottsbluff, NE 69361; and James A. Snowden, 1000 NBC Center, Lincoln, NE 68508 by regular United States Mail on this the 15th day of October 1993:

Glenn R. Waite

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

GLENN R. WAITE, Personal Representative of Harriet I. Waite, Deceased, Plaintiff, vs. REGIONAL WEST MEDICAL CENTER, NURSING SERVICE, Defendants.	* * * * * * * * * *	No. 38270 OBJECTIONS TO REQUESTS FOR ADMISSION AND ALL DISCOVERY DOCUMENTS

The defendants objects to all discovery requests including but not limited to plaintiff's Requests for Admission numbers 1-10 inclusive propounded in the form of Requests for Admission or otherwise for the reason that this case has been dismissed by the Court and is no longer pending.

Dated this 23 day of November 1993.

REGIONAL WEST MEDICAL CENTER
Defendant
By: VAN STENBERG, CHALOUPKA, MULLIN, HOLYHOKE, PAHLKE SMITH, SNYDER & HOFMEISTER
1904 First Avenue
P.O. Box 1204
Scottsbluff, NE 69361

By: KNUDSEN, BERKHEIMER, RICHARDSON & ENDACOTT
1000 NBC Center
Lincoln, Nebraska 68508
(402) 475-7011

By: _____
James A. Snowden-#13927
One of said Attorneys